On the Legality of Civil Non-prosecution Agreements

Jiahui Li*
China Jiliang University, Hangzhou, China
**Corresponding Author*

Abstract: Against the backdrop of a shortage of judicial resources and the coexistence of diverse demands for dispute resolution, the study on the legality of civil non-prosecution agreements holds both theoretical and practical significance. From a legal perspective, such agreements reflect the parties' autonomous exercise of their litigation rights, aligning with the principle of disposition and the principle of procedural subjectivity in civil litigation, and also conform to the spirit of private law autonomy. At the institutional level, they relieve judicial pressure and reduce the cost of dispute resolution through out-of-court consensual models, which is in line with the contemporary value orientation of civil litigation towards being "swift and economical". In response to the negative views such as "no explicit legal provisions" and "litigation rights cannot be disposed of", the generality of law and the lag of legislation determine that a dynamic perspective should be adopted towards new types of agreements. Meanwhile, the relativity of the disposition of litigation rights and the boundaries of the "prohibition of arbitrary litigation" principle provide interpretative space for their legality.

Keywords: Civil Non-Prosecution Agreements; Legality Determination; Diversified Dispute Resolution

1. Introduction

Today, in a situation where "there are many cases but few people" is severe, civil non-prosecution contracts are increasingly chosen by citizens in practice to be applicable for resolving disputes. However, in judicial practice, non-prosecution contracts exhibit characteristics such as diverse forms, complex objects of agreement, and various reasons for determining their validity. The courts accepting the case also have different views on the interpretation and validity of the agreement, resulting in a significant phenomenon of "different judgments for the same case" [1]. The reason for this lies in the lack of consensus on the legality of civil non-prosecution contracts.

2. The Theoretical Support for the Theory of Legitimacy Affirmation

The rationality argument of a viewpoint cannot do without the support of existing theories. Only by finding the corresponding legal basis can the advocated viewpoint be feasible. Legal principles provide a solid theoretical foundation and value orientation for doctrines. Only by conforming to legal principles can viewpoints be ensured to be consistent with the fundamental spirit and goals of the legal system. The civil non-prosecution contract reflects respect for the procedural subject status of the parties. The principle of disposition and the principle of procedural subjectivity of the parties can provide legal basis for it.

2.1 Principle of Disciplinary Action

The principle of disposition is generally recognized in the civil procedure laws of various countries. However, due to differences in litigation traditions, theories and concepts, the expressions of it vary. Generally, it is manifested in the "disposition right doctrine" of the civil law system, the disposition principle under the adversarial system of the Anglo-American law system, and the "power intervention" disposition principle of the Soviet Union and Eastern European countries. The principle of disposition represented by Germany and Japan in the civil law system can be defined as: the principle that the parties have the autonomy to decide on matters such as the beginning of the lawsuit, the subject matter and its scope of the lawsuit, and the conclusion of the lawsuit. The common law system does not specifically stipulate the principle of disposition but integrates the spirit of the principle of disposition into its adversarial litigation model. Under this litigation model, the principle of disposition is mainly manifested in that the initiation, continuation and development of the litigation process are controlled by the parties and their lawyers, and judges are basically

in a passive and neutral role as referees. Under such conditions, the parties naturally enjoy relatively full freedom of disposition regarding the initiation of the procedure, the objects and scope of the trial, as well as the conclusion of the lawsuit.

The Soviet Union and Eastern European countries carried out a thorough "transformation" of the principles of disposition in civil law countries, advocating that the principles of disposition should be subject to active intervention by the state. That is to say, the parties have the freedom to dispose of the initiation of litigation, the objects and scope of trial, and the conclusion of litigation, but this freedom should be combined with the active and proactive assistance of public power organs such as courts and procuratorates.

Since the end of the 19th century, the principle of disposition in Western countries has gradually shifted from an absolute one to a relative one, that is, it has rejected the old principles of "absolute disposition power" and "non-interference by the court", which is manifested in the shift of litigation concepts from individual-oriented to social-oriented and the transformation of litigation systems from absolute party-oriented to cooperationism or coactionism. After the dramatic changes in the Soviet Union and Eastern Europe, some former socialist countries began to "re-principleize" and "de-intervene" the principles of disposition. The litigation model returned from "authority intervention" to "party dominance", gradually returning to the principles of disposition of the civil law system.

By observing the understanding and evolution of the principle of disposition in different legal systems, it can be found that the relationship between the parties and the court in civil litigation in various countries has generally moved towards a non-extreme party-dominated state, emphasizing a consensual litigation model. Regarding the litigation rights of the parties, there is basically a consistent view that the parties have the freedom to dispose of the initiation, content and conclusion of the litigation process.

In China's civil litigation theory, the principle of disposition is stipulated in Article 13, Paragraph 2 of the Civil Procedure Law: "Parties have the right to dispose of their civil rights and litigation rights within the scope prescribed by law." The connotation of the principle of disposition can be summarized in the following aspects: 1. From the perspective of the subject of the principle of disposition, only the party concerned and similar parties can enjoy the right of disposition. A person without the capacity for litigation must exercise the right of disposition through his or her legal representative in litigation to be valid. The entrusted agent can only exercise the party's right of disposition on behalf of the party within the scope specially authorized by the party. 2. From the perspective of the limitations of the principle of disposition, the parties' disposal of civil rights and litigation rights must be carried out within the scope prescribed by law. That is, the principle of disposition is relative and limited. If a party's act of disposition exceeds the provisions of the law and infringes upon the civil rights and interests of others, such disposition is invalid. 3. From the specific content of the principle of disposition, the right of disposition of the parties includes the disposition of substantive rights and the disposition of litigation rights. What is related to the non-prosecution contract under study in this article involves one of the contents of the disposal of litigation rights within it, that is, after a dispute occurs, the parties can decide whether to file a lawsuit. Only when the parties file a lawsuit will the litigation procedure take place. 4. From the perspective of the exercise methods of the principle of disposition, the parties can exercise their right of disposition through both active and passive disposition methods. A party's active exercise of certain substantive rights and litigation rights through actions is regarded as a positive disposition, such as filing a lawsuit, appealing, changing or adding litigation requests, etc. A party's decision to refrain from exercising certain substantive rights and litigation rights they possess through inaction is regarded as a passive decision, such as waiving an appeal, etc [2].

The principle of disposition, as a fundamental principle of the Civil Procedure Law, grants civil subjects the autonomy to dispose of their substantive rights and litigation rights. When qualified parties reach an agreement on the passive exercise of the litigation right to Sue and the contract does not violate the law or infringe upon the rights and interests of others, such a non-prosecution contract should fall within the scope of protection of the principle of disposition, which should provide legal support for it.

2.2 Principle of Procedural Subjectivity of the Parties

Although civil litigation is a way for state public power organs to mediate and resolve disputes, it is undeniable that without the parties involved, there would be no civil litigation procedure. Extending

the subject status of the parties in substantive disputes to the litigation process, fully considering the principle that the users of the procedure, within the legal space for dispute resolution created by the state and operated by judicial power, can be respected and enjoy the right to guarantee their freedom of self-determination, this is the principle of procedural subjectivity [3]. Jiang Wei, a scholar, has also discussed from the perspective of the relationship between the Constitution and litigation law the position that the parties should occupy in the procedure. To ensure that the basic rights stipulated in the Constitution are guaranteed by procedure, it is necessary to affirm the legal subjectivity of the citizens within a certain range and grant the parties and those related to the procedure the right of procedural subject, that is, the status of procedural subject. This "principle of procedural subjectivity" is a guideline that legislators must follow when engaging in legislative activities, judges when applying current laws, and procedural stakeholders, including litigants, when conducting litigation proceedings [4].

The principle of procedural subjectivity of the parties is a value orientation established on the basis of a full understanding of the essence of civil litigation, that is, to view this issue from the perspective of "for whom the litigation system exists". The primary meaning of this is the transformation of the understanding of the litigation status of the parties, that is, from being an auxiliary object for the court to make factual judgments in litigation to a procedural subject that can have a substantive impact on the form of judicial power. Although the litigation system originated from people and imposes constraints on their behaviors, its ultimate goal is to serve people and resolve disputes between them. From the perspective of the birth of law or the emergence of the state, the litigation system and even the law are essentially coercive forces that only exist when citizens transfer their rights to state organs. It can be said that people have obtained the greatest freedom in a stable society by restraining themselves. To regard the parties as the subjects of the procedure means to view them as users of the system or the procedure, rather than as objects that can be manipulated under the litigation system. In litigation activities, being subject to procedural constraints is a self-chosen behavior of the parties, which is an autonomous act of resolving disputes and exerting the role of the system.

The principle of procedural subjectivity of the parties includes two connotations: the first is the full protection of the litigation rights of the parties. As the initiator, participant and judge of the litigation process, the parties enjoy the rights in the litigation process to decide whether to file a lawsuit, how to conduct the lawsuit, and to evaluate the litigation process and results, etc. To truly bring into play the value and role of this principle, it is necessary to fully guarantee the completeness of all rights of the parties in the litigation process. Second, the judicial power should maintain respect for the subject status of the parties in the litigation process. Under the premise of emphasizing the completeness of the litigation rights of the parties, respect the parties' use of the rights they enjoy. The parties and the judicial power shall not interfere with each other's rights enjoyed in the litigation process, especially the judicial power shall not interfere with or even deprive the parties of their rights exercise, which reflects respect for the subject status of the parties in the litigation process.

In accordance with the principle of procedural subjectivity of the parties, as the subjects of the litigation process, the parties enjoy rights such as initiating the litigation process. The court representing the judicial power shall not interfere with their decisions and shall show corresponding respect for the disposal of their rights. The civil non-prosecution contract, as a voluntary agreement reached by the parties on the right to Sue, is a passive disposal of their own procedural rights in litigation. The judicial power should respect the parties' choice and not interfere too much after the authenticity of the agreement is verified to be normal. "Non-prosecution" should fall within the scope of protection of the principle of the parties' procedural subjectivity.

3. An Explanation of the Significance of the Theory of Affirming Legitimacy

3.1 It is Conducive to the Development of Diversified Dispute Resolution Mechanisms

With the development of the social economy, citizens' interactions have become closer, and disputes have inevitably followed. Under the influence of the atmosphere of the rule of law construction, the concept of resolving disputes through litigation has increasingly taken root in people's hearts, and the number of civil lawsuits has increased dramatically as a result. The ways to resolve disputes are diverse. They not only include

negotiation, mediation and arbitration involving third parties, but also decisions made by administrative authorities in accordance with the law, as well as internal systems such as mediation and trial implemented by courts. Clearly, civil non-prosecution contracts fall within this category [5]. The concept of diversified dispute resolution mechanisms has gradually come into people's view. The term "diversified dispute resolution mechanism" was first proposed in the "Second Five-Year Reform Outline of the People's Courts (2004-2008)" issued by the Supreme People's Court in 2005, which mentioned "strengthening and improving the litigation mediation system, attaching importance to the guidance of people's mediation, and supporting and supervising arbitration activities in accordance with the law." Explore new dispute resolution methods together with other departments and organizations to promote the establishment and improvement of a diversified dispute resolution mechanism. This marks the beginning of China's formal promotion of the integration and development of litigation and non-litigation dispute resolution methods at the policy level. Subsequently, the Supreme People's Court has never ceased its exploration of diversified dispute resolution mechanisms. The Several Opinions on Establishing and Improving the Mechanism for Resolving Conflicts and Disputes That Connects Litigation and Non-litigation, issued in 2009, became the first guiding document with the flavor of detailed implementation rules to promote the development of diversified dispute resolution mechanisms. In 2016, the Supreme People's Court issued the "Opinions on Further Deepening the Reform of the Diversified Dispute Resolution Mechanism of the People's Courts", and in 2021, it released the "Implementation Opinions on Deepening the Construction of the One-Stop Diversified Dispute Resolution Mechanism of the People's Courts to Promote the Source Resolution of Conflicts and Disputes". It is evident that the Supreme People's Court has never ceased its efforts to promote the development and improvement of the diversified dispute resolution mechanism.

Nowadays, the situation of "many cases but few people" has not been alleviated and is even better. According to statistics, from 2015 to 2024, the average annual growth rate of cases accepted by the People's courts will be 11.23%. In 2024, the number of cases accepted will exceed 46 million, and the average annual case handling volume for each judge will reach 354 [6]. The court has been operating at an "overload" level. The emergence of non-prosecution contracts has provided another "unblocking channel" for the originally "slow-draining" "case reservoir". Recognizing the legality of the parties resolving disputes through the conclusion of non-prosecution contracts not only respects the parties' right of disposition and their status as procedural subjects, but also conforms to the trend of judicial reform, alleviates judicial pressure, and is conducive to the development of diversified dispute resolution mechanisms.

3.2 It Conforms to the Value Pursuit of the Current Civil Litigation System

The basic contents of the value pursuit of the civil litigation system have different viewpoints or expressions in different legal systems. The main aspects that have reached a relatively high degree of consensus include: "appropriateness, fairness, promptness and economy". "Appropriateness" emphasizes substantive justice and has high requirements for the correctness of factual judgment and the application of law. "Justice" emphasizes procedural justice, requiring that litigation procedures should be in compliance with norms and not pursue substantive justice at the expense of procedures. "Swift" emphasizes litigation efficiency, focusing on resolving disputes as soon as possible and shortening the litigation period. The term "economy" emphasizes the issue of litigation costs, aiming to minimize litigation expenses as much as possible by considering the human, material, financial resources and judicial resources required for litigation [7]. The ideal and optimal civil litigation system is naturally capable of encompassing all the above value pursuits. However, based on the actual operation mechanism of the litigation process, we can understand that it is difficult to achieve all-round value pursuits in the above four aspects. For instance, to pursue a proper and fair institutional arrangement, it is inevitable to sacrifice certain efficiency and economy at the cost, and only the best state under relative balance can be achieved. It should also be made clear that the priorities in the value content pursued by the civil litigation system are not fixed but are closely related to the national conditions and social conditions at different stages.

During the early stage of China's reform and opening up, the cultural level of the people was not high, and the possibility of the parties involved in disputes getting to know each other was

relatively large. To quickly resolve disputes and avoid the "embarrassment" and "blushing" of acquaintances resorting to courts over trivial matters, the civil litigation system often pursued relatively simple and rapid resolution channels, and did not have very high requirements for the rigor and standardization of procedures. Therefore, during this period, the weight of "speed and economy" will be higher than that of "propriety and justice". With the continuous deepening of the reform and opening-up policy, the quality of the people and their social circle have improved and expanded to a certain extent. The parties involved in disputes are no longer limited to the small group of neighbors and neighbors. Conflicts of interest with strangers have become more dominant. The value orientation pursued by the civil litigation system during this period was more inclined towards "appropriateness and fairness". The high litigation costs and the long litigation period were not a pity. Only by achieving justice in both substance and procedure could the parties who had contact due to conflicts of interest be convinced.

Since the beginning of the 21st century in China, the judicial situation of "many cases but few personnel" has once again tilted the balance of value pursuit in the civil litigation system towards the side of "speed and economy". However, the current pursuit of litigation efficiency and litigation economy does not imply a weakening of the demand for substantive and procedural justice. Instead, it aims to alleviate judicial pressure by seeking channels outside of litigation, which is precisely the purpose of the diversified dispute resolution mechanism mentioned earlier. A non-prosecution contract is a voluntary agreement reached by the parties outside of litigation to resolve disputes. The process does not require a lengthy judicial procedure or additional expenses, and it conforms to the value pursuit of the civil litigation system in terms of "promptness and economy". As long as the two contracting parties are civil subjects capable of recognizing the consequences of the contract and enter into the contract without significant misunderstanding or gross unfairness, and both parties truly express their intentions and reach an agreement, this method of dispute resolution does not weaken substantive and procedural justice. Therefore, acknowledging the legality of the non-prosecution contract is conducive to the resolution of disputes and conforms to the value pursuit of the current civil litigation system.

4. A Rebuttal to the Theory of Negating Legitimacy

Regarding the legality of civil non-prosecution contracts, the reasons of scholars who hold a negative view mostly stem from the denial of the legality of litigation contracts. Based on the excessive pursuit of "portal", scholars only recognize the legality of litigation contract forms explicitly stipulated by legislation, while they stubbornly reject and prohibit those not explicitly stipulated by law. Under the influence of the theory of rights protection, in the field of procedural law, there emerged a trend of thought that completely denied the legality of litigation contracts without explicit legal provisions. The main reasons include "explicitly stating one and excluding the others", "Public law cannot be modified by private law contracts", "arbitrary litigation is prohibited", and "contracts cannot have the same effect as statutory litigation acts." [8] The above reasons, when focused on civil non-prosecution contracts, can be summarized into two aspects: "There is no explicit legal provision" and "the right to Sue cannot be disposed of at will". However, legal provisions are general and legislation lags behind. Denying the legality of civil non-prosecution contracts based on the theory of the right to Sue should be regarded as a misunderstanding of the theory of the right to Sue. The author believes that such reasons should no longer be an obstacle to its role in resolving disputes. The following will provide a detailed discussion.

4.1 The Legal Provisions are General and there is a Lag in Legislation

The role of law lies in regulating various relationships among the state, society and citizens. The existence of law can provide guidance for the behaviors of all subjects in social life. However, given the complexity of social relations, when the state formulates normative legal documents, it is difficult to cover every detail. Instead, it adheres to the legislative principles of high abstraction and generalization to ensure that the legal provisions have broad adaptability and can cope with the complex and ever-changing social relations. For this reason, it is difficult for the law to provide detailed regulations on all possible types of contracts or behavioral patterns. The principle of autonomy of will established in Article 5 of the Civil Code precisely leaves sufficient space for mutual agreement among civil subjects. As long

as the contract reached between the parties does not violate the mandatory provisions of laws and administrative regulations, nor does it harm the public interests of society or the legitimate rights and interests of a third party, it should, in principle, be recognized as valid. Therefore, as a non-prosecution contract without explicit legal provisions, if it does not violate public order and good morals or mandatory legal norms, it should be respected and protected.

Furthermore, regarding the viewpoint of "explicitly stating one aspect and excluding the others", apart from the generality of legislation, the emphasis of different social and historical periods and the lag of legislation can explain this principle. As mentioned earlier, with the advent of the 21st century, the situation of a large number of cases and a shortage of personnel has intensified along with the improvement of social and economic levels and citizens' legal literacy. Citizens' pursuit of the value of "efficiency and economy" has facilitated the wide application of non-litigation contracts in social practice. However, due to the lag in legislation, the legal system often fails to respond promptly to the development needs of social practice. By entering into a non-prosecution contract and resolving disputes through mutual consent of the parties involved, the efficiency of dispute resolution can be effectively enhanced, litigation costs reduced, and judicial pressure alleviated. This approach aligns with the current pursuit of the rule of law in society. Once the voices from the judicial practice and theoretical circles rise, it is inevitable that practical measures will be taken by the legislative community.

To sum up, although the current law has not yet made clear regulations on non-prosecution contracts, this is not a systemic issue but rather a result of the generality of the legal provisions themselves and the lag in legislation. The view that "there is no explicit legal provision" denies the legality of non-prosecution contracts cannot hold water.

4.2 The View that "the Right to Sue cannot be Disposed of at will" is too Absolute

The non-prosecution contract mainly reflects the agreement on the right to Sue, mainly pointing to the restriction of the right to Sue. The right to Sue is one of the rights that the parties can exercise, and the parties can selectively exercise it when facing disputes. At the same time, the influence of this right is not only between the parties, but also involves the exercise of the court's judicial power, which is the starting point of the entire litigation activity [9]. One of the reasons for denying the legality of civil non-prosecution contracts lies in the fact that "the right to Sue cannot be disposed of at will." The main support for this view can be divided into two points. First, the right to Sue is directed at the Civil Procedure Law as public law, and public law cannot be disposed of through private law contracts. Second, the legality of the right to Sue agreement is denied based on the principle of "prohibition of arbitrary litigation". However, the author believes that the above two reasons are no longer convincing. The former has gradually become outdated with the development of the rule of law, and the latter is a wrong interpretation of the purpose of this principle.

First of all, the view that "public law cannot be dealt with by contract" is too absolute. The theory of the relationship between regulations and public law contracts can be roughly divided into three stages. The first stage holds that public law relations are generally determined by mandatory regulations, and the concept of contract based on autonomy of will is in contradiction with the essence of public law. The leading scholars hold that the private law order and the public law order are fundamentally opposed. The former is determined by the principle of private free consciousness, while the latter are all stipulated by mandatory regulations. The role of public law is to specifically apply the functions of these regulations, leaving no room for accommodating free will. Although there is discretion, this does not mean allowing private will. Even if, in accordance with the law, a contract should be used to stipulate specific circumstances, it does not mean that the legal relationship can be determined at will. Instead, it must be done in accordance with certain principles. This is different from the legal acts of private law and has the same function as other public laws, except that the law is applied. The second stage holds that public law relations are generally stipulated by mandatory regulations, and public law contracts are only allowed to exist when specifically recognized by law. This principle has always been regarded as an axiom arising from the particularity of public law. Therefore, in the absence of explicit legal recognition, theoretically, public law contracts cannot be effectively established. However, strictly implementing this theory cannot adapt to the actual situation. As a result, many scholars have made certain interpretations and amendments

to this to highlight the possibility of public law being contractionable. However, these theories are merely a kind of gap theory that emerges to reconcile contradictions when traditional theories fail to explain actual phenomena, and they have no substantial difference from the prevailing view. The third stage holds that when the law tacitly accepts public law contracts or in the absence of opposing provisions, public law contracts concluded based on administrative necessity are valid. The main view of scholars at this stage is that public law contracts, like private law contracts, can be freely concluded in principle, but it must also be admitted that in reality, the scope of public law contracts is much narrower than that of private law contracts. Jiro Tanaka, a Japanese scholar, holds that although this restriction is significant, as long as it is within the limit where public law equivalence can be established, it is theoretically inappropriate to completely deny the possibility of a contract merely on the grounds that there is no law that recognizes it. After a contract that violates the mandatory law is concluded, the only issue that arises within the limit of the violation of that norm is the validity of the content of the contract.

From the perspective of the development history of the theory of the possibility of public law contracts, the academic community's view on the issue of "whether public law can be dealt with by private law contracts" has gradually shifted from absolute opposition to relative moderation. It should also be noted that whether to support the freedom of public law contracts or to prohibit public law contracts cannot be determined solely based on the content of the regulations. It needs to be understood in combination with a certain social background. Although the Civil Procedure Law falls within the category of public law, with the development of the rule of law, the phenomenon of the mutual integration of public law and private law has become increasingly prominent. The principle of autonomy of will in private law is also reflected in the civil procedure law, which is one of the public laws. The principle of disposition discussed earlier is precisely one of its notable features. Based on this, in the current social context that encourages the adoption of diversified methods to resolve disputes, denying the legality of non-prosecution contracts on the grounds that "public law is not contractionable" is not only a "regressive interpretation" of the theory of the possibility of public law contracts, but also does not conform to the value pursuit of the current legal environment.

The principle of "prohibition of arbitrary litigation" means that the methods and sequence of litigation procedures, the ways and elements of litigation acts, etc., are all uniformly stipulated by law. The parties are not allowed to arbitrarily change the procedures, methods or requirements, etc. that are not anticipated by law in any litigation situation. The Civil Procedure Law emphasizes the "prohibition of arbitrary litigation" in order to maintain the stability of the litigation procedure, that is, to safeguard the stability and unity of the procedure and ensure that the public interests protected by the litigation procedure are not infringed upon due to unauthorized changes to the procedure. It can be said that the ultimate goal of this principle is to protect public interests from being infringed upon. The author believes that from the perspective of the civil litigation system, the public interests protected by this principle should include the following two aspects: procedural justice and the non-waste of reasonable judicial resources.

The first and most important thing is procedural justice. The fairness of the procedure cannot ensure the inerrancy of the substance, but if the procedure fails to meet the requirements of justice, even if the truth is ascertained at the substance level, it is difficult to convince the public. When citizens decide to resolve disputes through litigation, the primary value pursuit they must pay attention to is justice. Under the auspices of the state's judicial organs, the right and wrong are clarified, and the trial result supported by the state's public power represents the most just in the ordinary sense. Under such requirements for the protection of public interests, if the parties arbitrarily adopt means and methods that are contrary to the legal provisions and interfere with the originally normal litigation procedures, it will be difficult to ensure the fairness of the litigation procedures, that is, it will infringe upon the procedural justice requirements protected by the principle of "prohibition of arbitrary litigation". From this perspective, a civil non-prosecution contract is a mutual agreement between the parties, stipulating that they shall not file a lawsuit with the court. It has not entered the litigation process, let alone interfere with the normal litigation process, and has no impact on the fairness of the litigation process. Secondly, under the current severe judicial pressure, judicial resources are no longer able to meet the demands of the huge number of cases. Therefore, the allocation of

judicial resources must be reasonably arranged and cannot be increased or decreased at will. This is precisely another level of public interest protected by the principle of "prohibition of arbitrary litigation". As the volume of judicial resources remains relatively stable within a certain period of time, if the parties attempt to obtain more judicial resources by unilaterally agreeing to change the litigation procedures, elements, etc., it will undermine the original uniformity of the civil litigation procedures, increase judicial pressure and even infringe upon others' judicial resources. The civil non-prosecution contract is an agreement reached by the parties themselves on the resolution of disputes. The content and procedures of the agreement do not involve the occupation of judicial resources and will not infringe upon the public interests protected by the principle of "prohibition of arbitrary litigation". On the contrary, it has played a role in saving judicial resources and alleviating judicial pressure.

From the above, it can be seen that in the current social background and legal environment, adhering to the absolute view that "public law cannot be contracted" is not in line with reality. The public interest protected by the principle of "prohibition of arbitrary litigation" does not conflict with the civil non-prosecution contract. Therefore, denying legality with the view that "the right to Sue cannot be disposed of at will" is not persuasive.

5. Conclusion

Under the judicial predicament of "many cases but few personnel" and the development demands of diversified dispute resolution mechanisms, the research on the legality of civil non-prosecution contracts has transcended theoretical disputes and become an important topic with both practical value and institutional significance. From the perspective of the legal basis of the principle of disposition and the principle of the procedural subjectivity of the parties, the non-prosecution contract, as the autonomous disposition of the litigation rights by the parties, not only conforms to the respect for the status of the procedural subject in the Civil Procedure Law, but also aligns with the private law spirit of "autonomy of will". In terms of institutional value, its model of resolving disputes through out-of-litigation agreement can effectively alleviate judicial pressure and reduce the cost of dispute resolution, which is deeply in line with the value orientation of the contemporary civil litigation system that pursues "promptness and economy". In response to the negative views that "there is no explicit legal provision" and "the right to Sue cannot be disposed of", the general nature of the law and the lag in legislation determine that the mechanical thinking of "explicitly stating one means excluding the others" cannot be used to deny the new form of contract. Moreover, the relativity of the disposition of the right to Sue and the public interest boundary of the principle of "prohibition of arbitrary litigation" also reserve the interpretative space for the legality of the non-prosecution contract. In fact, the non-prosecution contract has not shaken the stability of the litigation process. Instead, it has optimized the efficiency of dispute resolution through the autonomous choice of the parties involved. This precisely reflects the modern judicial pursuit of a balance between substantive justice and procedural efficiency.

If the civil non-prosecution contract is to truly become an effective way to resolve civil disputes, the research on its legality cannot be bypassed. It is hoped that through the research of this article, the practical vitality of civil non-prosecution contracts can be truly unleashed, and a modest contribution can be made to the improvement of the diversified dispute resolution mechanism with Chinese characteristics.

References

[1] Zhang Lin. The nature and effect of a civil non-prosecution agreement. Theoretical Journal, 2025, (03):160-169.

[2] Zhang Jiahui. Litigation acts of the parties under the principle of disposition. Modern Law, 2005, (03):62-73.

[3] Tang Li. The Principle of Procedural Subjectivity of the Parties - Also on the Legal Theory of Litigation Construction Centered on the parties. Modern Law, 2003, (05):122-127.

[4] Jiang Wei. The Mission of Market Economy and Civil Procedure Law. Modern Law, 1996, (03):4-13.

[5] Li Weiguo, Zhan Jinghua. Research on Civil Non-Prosecution Contracts from the Perspective of Source Governance of Litigation. Journal of Guangxi College of Political Science and Law Management Cadres, 2024, 39(01):53-64.

[6] Gao Qianqian. How can the people's courts break the deadlock of having too many cases and too few staff. People's Court Daily, 2025-

03-07 (004).
[7] Zhang Weiping. On the Value Pursuit of the Civil Litigation System. Research on Modernization of the Rule of Law, 2021, 5(03):1-11.
[8] Zhang Jiajun. On the Legality of Litigation Contracts. Legal Forum, 2010, 25(04):112-116.
[9] Yang Tao. Disputes over Non-Prosecution Contracts and Suggestions for Handling. Journal of Heilongjiang College of Political Science and Law Management Cadres, 2023, (01):86-91.

