

The Civil Litigation System in the Democratic People's Republic of Korea as a Means of Resolution of External Economic Disputes

Kyongwon Son*

Abstract

In the Democratic People's Republic of Korea, the civil suit system as a means of resolution of external economic disputes has a long history, from immediately after liberation to the present day. In the DPRK, a unified judicial contestation apparatus and judicial organization system was created based on the several laws and regulations enacted between 1945 and 1976. Initially, the civil suit system was limited to maritime affairs regarding quayside handling of cargo, and utilization of a port or shipping agent by a foreign vessel, etc., in open ports. Today, it has become a comprehensive dispute resolution mechanism, which can solve various disputes. The Law of the DPRK on External Civil Relations provides the basic principles for judicial districts in external civil suits. The civil litigation system in the DPRK has established a clear and simplified litigation processing system which has overcome the complexity of legislation in other countries in the technical aspects of the litigation procedures by making all the activities, from the filing of an action to the beginning of litigation, to be "preparation for litigation." In order to protect the rights and interests of the parties to a lawsuit, our system has emergency appeals and retrials, while having a two-tiered judicial system.

Keywords: Civil litigation, International private law, External economic dispute, Korea

In the Democratic People's Republic of Korea (hereinafter referred to as the DPRK), the civil litigation system as a means of resolution of external economic disputes has a long history, from immediately after liberation to the present day.

In the DPRK, a unified judicial contestation apparatus and judicial organization system was created based on the following ordinances: "On the Organization of Law Courts", Decree No. 4 of the North Korean Judicial Bureau, on 23 November Juche 34 (1945); "Basic Principles on the Organization and Duties of the Judicial Bureau, Courts, and Prosecutors' Office of the North Korean Provisional People's Committee", a Decision of the North Korean Provisional People's Committee on 6 March Juche 35 (1946); and "The Court Organization Act of the DPRK", enacted on 1 March Juche 39 (1950) and revised in Juche 65 (1976) and Juche 87 (1998). Based on this system, a comprehensive and specific dispute settlement mechanism, in which external economic disputes as well as domestic civil disputes can be settled, has been developed through the following laws and regulations: "Regulations on the Enforcement of Adjudications and Decisions", Cabinet Decision No. 62, enacted on 29 October Juche 49 (1960) and revised in Juche 86 (1997) and Juche 87 (1998); "Regulations on the Disposal of Debt which Has Exceeded the Statute of Limitations", Cabinet Decision No. 46, enacted on 30 March Juche 50 (1961); "Regulations on Disposal of Property Loss", Cabinet Approval No. 798, enacted on 25 November Juche 50 (1961); the "Civil Proceedings Act of the DPRK", Decision No. 18 of the Standing Committee of the Supreme People's Assembly, enacted on 10 January Juche 65 (1976) and revised on 25 May Juche 83 (1994); the "Law of the DPRK on External Civil Relations", Decision No. 62 of the Standing Committee of the Supreme People's Assembly, enacted on 6 September Juche 84 (1995) and revised on 10 December Juche 87 (1998); and the "Attorney-at-

Law Act of the DPRK”, Decision No. 43 of the Standing Committee of the Supreme People’s Assembly, enacted on 23 December Juche 82 (1993).

Initially, the civil litigation system was limited to maritime affairs regarding quayside handling of cargo, and utilization of a port or shipping agent by a foreign vessel, etc., in open ports such as those of Sinuiju, Nampho, Wonsan, Hungnam, Songjin, Chongjin, and Rajin. Today, it has become a comprehensive dispute resolution mechanism, which can solve various disputes. It can solve disputes of both substantive law and procedural law related to the delivery of cargo, setting payment, maritime transportation, investment, intellectual property rights and services.

The Law of the DPRK on External Civil Relations provides the basic principles for judicial districts in external civil suits. The jurisdiction over a case which occurs inside the DPRK shall be determined by the agreement of the parties concerned (Article 49 of the Law of the DPRK on External Civil Relations). In the case where no agreement was made, the DPRK acquires the jurisdiction in the following cases: (1) a defendant has an address or a domicile in the DPRK; (2) the loss of property, which is the cause of the said case, was incurred in the territory of the DPRK; (3) the property of the defendant or the object being claimed for by the plaintiff exists within the territory of the DPRK; and (4) the cause giving rise to a dispute is related to any immovable property registered in the DPRK (Article 50 of the Law of the DPRK on External Civil Relations). A civil action going against the abovementioned principles regarding jurisdiction shall be rejected or suspended (Section 1 of Article 56 of the Law of the DPRK on External Civil Relations).

A party wishing to file a lawsuit should submit a written complaint to the court of competent jurisdiction. A lawsuit is deemed to start on the day of acceptance of the written complaint of the plaintiff. However, in the case where the written complaint is submitted by post or a confidential document, the date on which it is forwarded is deemed to be the day of the start of the lawsuit (Article 65 of the Civil Proceedings Act of the DPRK). A litigant juridical person shall conduct an act of litigation through a representative or a procedural attorney, while a litigant individual can do so through a procedural attorney. If a procedural attorney is in charge of a lawsuit, he or she has to submit a letter of attorney to the court. In the case of a party delegating an act of litigation to an agent in a tribunal, the record of the hearing takes the place of the letter of attorney (Article 33 of the Civil Proceedings Act of the DPRK). The name of the court, name, address and other identifying information of the parties in a lawsuit, the object of the lawsuit, substantial reasons, and evidence, which back up the object, should be attached to the written complaint. Copies of the written complaint whose number corresponds to the number of defendants, a letter of attorney in the case where the lawsuit is brought by an attorney, the postage stamps needed for the delivery of the relevant documents, and the receipt of the fee for a civil procedure should be attached (Article 67 of the Civil Proceedings Act of the DPRK).

The court reviews the written complaint of the plaintiff. In the case where the content or attached documents do not meet the requirements of a lawsuit, the court may order the plaintiff to rectify the errors within a specified period prescribed by the court. If the plaintiff rectifies the errors within the specified period, the written complaint is deemed to have been brought on the date of the original date of submission. If the plaintiff does not do so, the court shall send back the written complaint to the plaintiff (Article 70 of the Civil Proceedings Act of the DPRK).

The court shall start the preparation of the trial and that of the hearing to assure a prompt and proper trial and adjudication (Article 74 of the Civil Proceedings Act of the DPRK). In the

preparatory proceedings, collection of evidence and procedural matters shall be resolved. In order to perform the preparation the court may meet parties in the lawsuit to ask for an independent valuation, to conduct field investigation and/or to inspect the evidence.

The court may issue an order to hold the property of the defendant, by a ruling, or by the application of one of the parties in a lawsuit or its own discretion. The holding of property shall be made only in the cases for which execution of judgment cannot be made without the property in question. The award on the holding of property shall be made by the executor of the court (Article 81 of the Civil Proceedings Act of the DPRK).

The court may accept an application for the withdrawal of the lawsuit as the result of the abandonment of proceedings or agreement on settlement between the parties in the lawsuit and to issue a ruling for the settlement of the lawsuit (Article 85 of the Civil Proceedings Act of the DPRK and Section 3 of Article 56 of the Law of the DPRK on External Civil Relations).

The court shall reject a lawsuit by a ruling in the following cases: a contentious case should be handled by arbitration or administrative procedures; a final decision or ruling has already been made; a person who is not entitled to be a party of a lawsuit is a plaintiff or a defendant and it is not possible to replace that person with someone who has the authority to be a party to the lawsuit (Sections 1, 2 and 3 of Article 86 of the Civil Proceedings Act of the DPRK); and the same case has already come under the jurisdiction of a court for trial or arbitration in a foreign country (Article 56 of the Law of the DPRK on External Civil Relations).

The court shall make a ruling to transfer the case to trial in the case where it regards the preparatory proceedings have been successfully completed. The particulars such as time, date, place, witnesses, expert witnesses, and whether or not the proceedings shall be open to the public shall be contained in the ruling. The ruling shall be notified to the parties to a lawsuit and other related persons (Articles 88 and 89 of the Civil Proceedings Act of the DPRK). All of the acts conducted during the preparatory proceedings shall be recorded (Article 91 of the Civil Proceedings Act of the DPRK).

A procedure shall be conducted in an order corresponding to the parties in a lawsuit, the witnesses and expert witnesses. The court shall take cognizance of court costs and by whom they are to be borne. When all the proceedings have been finished, the court shall notify the people involved in the lawsuit and go to a council room to conclude judgment. Judgment shall be made on the same day of the end of the proceedings in the name of the Democratic People's Republic of Korea (Articles 132 and 134 of the Civil Proceedings Act of the DPRK).

Judgment shall include acknowledgment or dismissal of the claim of a plaintiff, the applicable law, how to deal with held property, court costs and by whom they are to be borne, and shall be made by majority vote of the court panel (Articles 127 and 128 of the Civil Proceedings Act of the DPRK).

A party in a lawsuit may appeal or file an objection within ten days of receipt of the transcript of the decision if he or she has an objection to the decision of the court of first instance (Article 140 of the Civil Proceedings Act of the DPRK). A written appeal or a letter of complaint shall be submitted to the court of first instance, providing the reasons and the demands. Information which was not submitted to the court of first instance may be attached (Article 141 of the Civil Proceedings Act of the DPRK).

The court of second instance shall proceed with a record of the case in the first instance, the content of a written appeal or a letter of complaint and a record of the hearing of the judge. After reviewing the materials, a hearing of the parties in a lawsuit shall be accorded.

The court of second instance may not make a finding for the case. It shall send back the case to the court of first instance with a ruling to revoke the decision and to review the decision under the following circumstances: the court of first instance went against the law in the composition of the court or did not find substantially important facts; the court of first instance did not find or review the evidence; the court of first instance made a decision on the basis of unproven facts; the court of first instance did not fully safeguard the procedural rights of a plaintiff or a defendant; and the court of first instance processed the case without considering the qualification of a plaintiff and/or defendant (Article 152 of the Civil Proceedings Act of the DPRK). It may issue a ruling to state a point lacking in the decision of the court of first instance, if there is no need to revoke the decision or the ruling of the court of first instance (Article 155 of the Civil Proceedings Act of the DPRK).

The civil procedure of the Democratic People's Republic of Korea has a system to conduct an emergency appeal and retrial in order to assure a party to a lawsuit to be free from defects in the processes of the courts of first and second instance.

An emergency appeal signifies an act of institution by the Chief Justice of the Supreme Court to the Supreme Court in order to adjust the final and binding judgment, if it is against the requirements of the law. An emergency appeal case is dealt with by a tribunal consisting of three Supreme Court judges for cases concerning a judgment or ruling of all courts other than the Supreme Court. For cases concerning a judgment or ruling of the Supreme Court, the judicial assembly of the Supreme Court, which consists of the Chief Justice, Vice-Chief Justices and judges, shall handle them. A retrial signifies an act to adjust the final and binding judgment in the following circumstances: the evidence on which the judgment or ruling was based turned out to be false; facts which would have affected the judgment or ruling became clear after the case had been finalized; it was proved to be true that a party in a lawsuit or a member of a tribunal had committed an illegal act which would affect the case; it was proved to be true that the judgment or ruling had been made based on a judgment or ruling previously revoked. A retrial case shall be instituted to the Supreme Court by the Chief Justice or a relevant court. A retrial case is dealt with by a tribunal consisting of three Supreme Court judges.

In the civil procedure system of the DPRK, a judgment or ruling is executed, upon the application of a party concerned within two months after it was made, by a court execution officer within one month from the issuing date of the writ of execution (Article 176 of the Civil Proceedings Act of the DPRK). If the judgment to be executed is one decided by a foreign court, it is a basic principle to acknowledge such a judgment where a mutual acknowledgement exists with the country in which the foreign court is situated (Article 59 of the Law of the DPRK on External Civil Relations). Even though a mutual guarantee exists, it is still possible to refuse to approve and execute such foreign judgments, as follows: the content of the judgment or ruling is contrary to the fundamental principles of the legal system of the DPRK; the judgment or ruling is related to a dispute coming under the jurisdiction of a court in the DPRK; the content of the judgment is the same as that already approved by a third country; a judgment or decision has been given in the absence of any party concerned for no warrantable reason; and where there is due cause based on the law of the DPRK (Articles 60 and 61 of the Law of the DPRK on External Civil Relations).

As described above, the dispute settling system for external economic disputes in the DPRK subject to a litigation system is superior and cannot be seen in other countries, from the technical aspects of the legislation to the entire process of the litigation procedures.

The civil litigation system in the DPRK has established a clear and simplified litigation processing system which has overcome the complexity of legislation in other countries in the technical aspects of the litigation procedures by making all the activities, from the filing of an action to the beginning of litigation, to be “preparation for litigation.” In our system, it is a rigid rule to use the Korean language and the judgment is made in the name of the DPRK. In order to protect the rights and interests of the parties to a lawsuit, our system has emergency appeals and retrials, while having a two-tiered judicial system.

* Researcher, Law Institute, DPRK Academy of Social Science