

Исследование механизма прекращения дела в уголовном процессе Research on the Case Severance Mechanism in Criminal Proceedings

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Аннотация. Выделение уголовных дел в отдельное производство является распространенным и гибким процессуальным механизмом в судебной практике для рассмотрения объединенных уголовных дел, который играет важную роль в обеспечении качества уголовного преследования, повышении эффективности рассмотрения дел и защите прав обвиняемых. Однако в судебной практике при рассмотрении отдельных дел возникло много проблем. Например, если предмет решения необоснован, стандарты применения не унифицированы, механизм надзора недостаточен, права сторон не защищены и т.д., в результате применение разделения дел становится хаотичным, процедура — не стандартизированной, возникают всевозможные явления функционального отчуждения, значительные отклонения от обеспечения верховенства права. В этой связи необходимо скорректировать методику возбуждения дела о прекращении производства по делу, уточнить объем дел о прекращении производства по делу и унифицировать применимые стандарты.

Следует также создать и усовершенствовать механизмы внешнего и внутреннего надзора, чтобы предоставить сторонам научные и разумные средства судебной защиты, эффективно предотвращающие злоупотребление властью. Конечная цель состоит в том, чтобы унифицировать права и обязанности, связанные с судебной практикой рассмотрения отдельных дел, уменьшить злоупотребление правом на рассмотрение отдельных дел на практике и повысить ценность системы рассмотрения отдельных дел.

Ключевые слова: разделение дел, функциональное отчуждение, судебный надзор, процессуальные нормы

Abstract. Criminal severance of cases is a common and flexible procedural mechanism in judicial practice for handling joint criminal cases, which plays an important role in ensuring the quality of criminal prosecution, improving the efficiency of case handling, and safeguarding the rights of the prosecuted. However, many problems have arisen in the operation of judicial practice in the separate case handling. For example, the subject of the decision is unreasonable, the application standards are not unified, the supervision mechanism is insufficient, and the rights of the parties are not protected, etc., resulting in the application of Severance of cases is chaotic, the procedure is not standardized, all kinds of functional alienation phenomenon, has significantly deviated from the track of the rule of law. In response to these issues, it is necessary to adjust the initiation method of severance of cases, clarify the scope of severance of cases, and unify the applicable standards for severance of cases. In terms of supervision mechanisms, external and internal supervision mechanisms should be established and improved to provide parties with scientific and reasonable judicial remedies, effectively preventing the abuse of power. The ultimate goal is to unify the rights and responsibilities of the judicial practice of approving separate cases, reduce the abuse of the right to try separate cases in practice, and truly realize the value of the separate case trial system.

Keywords: severance of cases, functional alienation, legal supervision, procedural norms

Criminal severance of cases means that some suspect involved in a joint crime or involved in the case cannot or should not be tried together with other suspects in the case due to legal provisions or special circumstances of the case itself, so they need to be tried alone or together in other cases.¹ This system is an important case handling method in judicial practice and plays an important role in ensuring the quality of prosecution, improving litigation efficiency, and safeguarding the legitimate rights and interests of the parties. However, due to the constraints of legal lag, lack of sufficient supervision and external objective environment, there are many problems in the actual operation of severance of cases. With the progress of society, people's legal awareness has been strengthened, and the demand for legal fairness and judicial efficiency has also been increasing. As a common case-handling mechanism in judicial practice, whether or not it is applied in a scientific manner has a direct bearing on the quality of the handling of criminal cases and the rights and interests of the parties involved. Therefore, it is of great significance and value to discuss the severance of cases in criminal cases. Through in-depth analysis of the problems in the practical operation of the Severance of cases mechanism and discussion of how to improve it, it will help to ensure that severance of cases plays a positive role in the handling of criminal cases, safeguard the justice of the law and the lawful rights and interests of the parties concerned, and will be of far-reaching significance in improving judicial practice, promoting systemic improvement and raising the level of judicial work.

1. Functional alienation of criminal Severance of cases in judicial practice

1.1. Obstructing the unification of sentencing standards for joint crimes

In some joint crimes, there are often cases where severance of cases is handled. The severance of cases divides the cases of multiple suspects or defendants into "separate cases" and "this case", which involve different judicial organs and different judges. This leads to different sentencing standards even if the trial is based on the same facts of the case, as it is conducted by different regions or judges.

The severance of cases affects the judge's identification of the facts of the "later case". In some joint crimes that are severance of cases, involving the principal and subordinate offenses, the determination of the principal and subordinate offenses

is important for the outcome of the case trial, and frequent severance of cases is often not conducive to the ascertainment of the facts of the case as a whole. Secondly, in the severance of cases, the judge in the latter case is prone to copy the factual findings and evidence of the former case, and even the principal and accessory offenses, neglecting to ascertain the facts of the latter case, resulting in the invocation of a confusing situation, and hampering the uniformity of sentencing standards.

The conviction and sentencing of "this case" and the "separate cases" are not consistent. In separate trials, facing the same evidence, different judges or juries may make contradictory judgments, leading to the phenomenon of different judgments in the same case.² Secondly, after the severance of cases, the "this case" and "separate cases" are often different offenses, with different degrees of social harm and different internal feelings. Different judges, based on different facts and findings of guilt, as well as differences in the parties' attitudes to pleading guilty, may have a certain degree of disagreement in the trial of the case, which may easily lead to inconsistencies in the conviction and sentencing of the offenders.

1.2. Misalignment of the risk burden of case handling

In the practice of severance of cases, the investigation organ generally pays more attention to the collection of criminal facts and evidence of the suspect who is present in the case, while for those who are not present in the case who are applicable to severance of cases, it adopts incidental review, ignoring the fugitive suspects of the investigation and evidence collection. The judges in the "later case" usually use the confession of the suspects in the previous case as the basis for the trial, which undoubtedly increases the risk of the case. For the risk of wrongful convictions caused by a lack of evidence, it is usually not ultimately borne by the investigating authorities, but by the procuratorial organs or courts, which results in a mismatch in the risk burden of case handling.

Although the Supreme People's Procuratorate and the Supreme People's Court issued the "Opinions on Improving the Judicial Responsibility System" respectively, both will "do their duty of care" as a reason to exempt the prosecutors and judges from responsibility, but for the "do their duty of care" of the assessment, often However, the judgment of "due diligence" is often based on the final outcome of the trial. Therefore, the risk of severance of cases is actually borne by the procuratorial authorities and the people's courts, and even if they have "fulfilled their

¹ *Hu Zhi-fang*. Reconsideration of the Concept of Separation of Cases in Criminal Cases and its Scope of Application — Taking the Guiding Opinions on Regulating the Application of "Separation of Cases" in Criminal Cases as a Reference // *Journal of Law*. 2016. No. 9. P. 112.

² *Dong Kun*. On the Alienation and Return of the Normative Function of "Severance of Cases" in Criminal Proceedings // *Law Forum*. 2013. No. 28 (01). P. 108.

duty of care”, errors in the outcome of the trial will cause them to bear the burden of error, and a great deal of judicial resources will certainly be wasted.

1.3. Expanding the space for power-seeking judicial corruption

Severance of cases as a special case digestion mechanism, will be a part of the common crime suspects temporarily not prosecuted undoubtedly for the right to rent-seeking space. In practice, if the suspect and the public security organs have improper contact, artificially divided into severance of cases, and then downgraded processing, can make the defendant to reduce the punishment or even not punished, the plaintiff's rights and interests have been harmed but nowhere to complain. For example, the Intermediate People's Court of Jiangmen City, Guangdong Province, in its judgment (2002) Jiang zhong Fa Xing Jing Chu Zi No. 33, stated that Yan Xi long and five others were convicted of illegal business operations for laundering money through underground banks. However, the core contributors of the bank, Lian Zhuozhao and Lin Yiming, were labeled as “severance of cases” and fled to Hong Kong to circumvent the law, and were eventually not brought to trial.³

Secondly, the public security organs nowadays mainly adopt a performance appraisal system, which is a comprehensive evaluation of the public security organs' work in terms of the detection rate, the quality of case processing, and the degree of satisfaction with community services. Under this evaluation mechanism, investigative departments are more inclined to severance of cases in order to increase the detection rate. As a result, the public security organs sometimes artificially divide up cases in order to meet their targets, disregarding the objective laws of crime and investigation, thus wasting the country's judicial resources.

1.4. Obstructing the realization of the procedural rights of the accused

It is often difficult to realize the defendant's rights to confrontation and defence after the severance of cases. After the severance of cases, the “this case” and the “separate cases” will undergo investigation, prosecution and trial respectively. In most cases, the case-handling authorities tend to use the confession or relevant evidence of the offender in the “separate case” as evidence in the case, at which point the offender in the “separate case” becomes a “witness” in the case. At this time, the other offender becomes a “witness” in the case, and his confession will be used

as “testimony” to confirm the criminal conduct of the defendant in “this case”.⁴ In fact, in the severance of cases, the relevant accomplices are often detained or punished because the previous case has already been tried, and they are often unable to testify in person, which results in the defendant suspect in the “separate case” not being able to exercise his or her right to question and cross-examine the “witness”, thereby causing the defendant to lose their relevant right to cross examine and argue. And some judges will invoke the fact finding and evidence of the “this case” when hearing the “separate case”, simplifying or omitting the verification of evidence, which will indirectly deprive the suspect of his right of cross examination and defense.

2. Reasons for the functional alienation of the mechanism for the criminal severance of cases

2.1. Single decision-making subject

One is the single decision subject in the decision procedure of severance of cases. In practice, severance of cases is often regarded as a means for investigating authorities to deal with some common crimes in handling cases.⁵ In the course of criminal proceedings, the investigating authorities often indicate on the transferred legal documents that the suspects are to be “severance of cases”.⁶ This shows that the decision to severance of cases is currently centralized in the investigating authorities. In fact, severance of cases may occur at every stage of investigation, prosecution and trial, so restricting severance of cases to the investigating authorities and the investigation stage is very limited.

Another is the lack of status of the parties in the severance of cases procedure. In criminal proceedings, the parties are often in a passive position as to whether or not to severance of cases and the reasons and results of severance of cases, and they do not have the right to request severance of cases. However, the severance of cases has a direct impact on the punishment of the accused. Therefore, the absence of the subject position of the parties in severance of cases is unfair, and the parties should not be excluded from the scope of the subject of the right to decide.

2.2. Applicable standard ambiguity

The ambiguity of the applicable standards for the severance of cases is demonstrated first and foremost by the fact that there are no uniform standards of

³ Zhan Yi-jia. Alert to legal loopholes under “severance of cases”[J] // Government Legal System. 2010. No. 13. P. 40.

⁴ Liu Ren-wen. Review and Improvement of Severance of Cases in Criminal Cases // Politics and Law. 2021. No. 5. P. 144.

⁵ Wu Guo-qian, Xu Ying, Chen De-yuan. Research on Severance of Cases in Criminal Cases // Public Security Research. 2012. No. 7. P. 38.

⁶ Fang Hai-ming, Zhu Zai-liang. Empirical Analysis of Cases of Severance of Cases in Criminal Proceedings — The Perspective of Huzhou City, Zhejiang Province // Jurisprudence. 2010. No. 10. P. 152.

application and sentencing among different state organs. In judicial practice, the standards for the application of severance of cases by investigative and procuratorial organs in different regions may vary, and the delivery and labeling of relevant case file materials are not uniform. Article 18 of the “Guiding Opinions” provides that “local procuratorates and public security authorities may, in accordance with these Opinions and in the light of local practice, formulate specific implementation methods for the severance of cases.” This provision allows localities to formulate specific implementation plans, which is influenced by local laws and regulations, and is even more detrimental to the uniformity of the applicable standards and sentencing criteria for the severance of cases. Secondly, the specific legal provisions on the application of severance of cases are not exhaustive enough, and the decision-making power of severance of cases is centralized here in the investigating authorities, which makes the investigating authorities have excessive discretionary power and no uniform and detailed provisions to guide and constrain them, which will inevitably result in different judges dealing with the same kind of cases with different standards, which in turn will result in different results. The criteria in the “Guiding Opinions”, such as “suspected of having committed other crimes and in need of further investigation” and “where severance of cases is more appropriate”, tend to give the investigating authorities too much discretion,⁷ which is not conducive to uniformity in the application of the standards.

2.3. Insufficient supervision mechanism

According to the content of the “Guiding Opinions”, it can be seen that the current severance of cases is mainly internal supervision and supervision by the procuratorial organs, which has a simple provision, but only stays on “paper” and does not have rigid requirements. For example, although Article 5 of the “Guiding Opinions” stipulates that the materials to be severance of cases should be examined and approved by a higher authority, this provision is mainly an internal oversight, and the intensity of supervision is far from adequate. For example, although Articles 12 and 16 of the “Guiding Opinions” stipulate the For example, although articles 12 and 16 of the Guidelines provide for the supervision and review by the procuratorial authorities of materials related to the handling of severance of cases by the public security authorities, these two provisions do not give the procuratorial authorities clear powers and duties, and the Criminal Procedure Law and other relevant laws do not contain relevant provisions, so the supervision by the procuratorial authorities remains on the surface only. Social supervision of the severance of cases is also almost vacant at the present time, which has

led to the emergence of various problems with the severance of cases.

American scholar Bodenheimer said: “a person with absolute power always tries to impose on those he controls.” The lack of supervision and other reasons have led to the functional alienation of the severance of cases mechanism and the failure to guarantee the quality of cases, and it has even become a way and a means of practising favouritism and deviating from the rule of law. For example, in 2002, Lian, known as the “King of High Seas Gamblers”, was suspected of a major smuggling case, but with the help of Zheng Shao dong, Assistant Minister of Public Security, he used the severance of cases as an excuse to avoid trial and fled to Hong Kong, where he was not arrested until 2008 because of his involvement in other cases.

2.4. Lack of protection of rights

As for the current provisions relating to the severance of cases, the severance of cases in practice may exist in the absence of relief procedures, mainly reflected in the lack of procedures against the severance of cases, the lack of review and appeal mechanisms, the lack of remedies, the delayed judicial settlement, etc., affecting the rights of the parties to the safeguards.

From the perspective of criminal suspects and defendants, a coercive legal instrument implemented by a National Judicial Organs is undoubtedly arbitrary if it is not accompanied by any sanctioning consequences and lacks avenues for redress. Indeed, in the current decision to “severance of cases”, criminal suspects and defendants do not have a suitable way to object to the decision to severance of cases, reconsideration, appeal and other means of redress, most of them are passive acceptance. Moreover, in cases of severance of cases, the relevant co-defendants are often not available to testify, but their confessions often become “witness testimony”, which results in the defendant losing the relevant rights of confrontation and defense.

3. Reflections on improving the mechanism for severance of cases

3.1. Adjusting the initiation method severance of cases

As mentioned above, severance of cases appears in all stages of criminal proceedings, and it may be decided at each stage. And the current practice, the severance of cases of decision-making power is mainly concentrated in the investigative organs, which is too one-sided for the application of severance of cases. If the procuratorial organs are given the right to decide on the severance of cases, it will be more conducive to the procuratorial organs in the criminal proceed-

⁷ Liu Ren-wen. Op. cit. P. 142.

ings on the public security organs of the severance of cases related to the supervision of the work, and give play to its subjective initiative. It is more conducive to making up for and ensuring the fairness and reasonableness of the previous legal procedure through the latter procedure, and promoting procedural justice. In addition to this, the people's court as a trial organ, its actual trial of the case so that the actual situation of the case is clearer, so give the people's court appropriate decision-making power is more conducive to litigation to the improvement of efficiency. The investigative power of the supervisory organs is similar to that of the public security organs, so give the supervisory organs a certain severance of cases decision-making power is also in line with the logic of the law. Therefore, this paper believes that the concept of the severance of cases should be clearly defined and broadened to include public security organs, procuratorial organs, the people's court and the supervisory organs.

In addition, the parties should also be given the right to apply. The right of application refers to the right of the suspect or defendant to take the initiative to apply for severance of cases. In the event of unduly prolonged detention, delayed trial, or a joint trial that is detrimental to one's own interests, the person concerned may file an application with the case-contracting organ, stating the reasons and justifications for the application. Within the prescribed time limit, the relevant state organ shall examine the application and respond with a statement of reasons as to whether or not the severance of cases will be applied. If the party concerned is not satisfied, he or she has the right to file a reconsideration. By giving the parties concerned the right to file an application, it facilitates a better choice of the form of litigation that suits the parties concerned, and also indirectly supervises the relevant State organs, thereby reducing the possibility of adverse consequences for the rights holders.

3.2. Unified standard for the application of severance of cases

The standardization of the application of severance of cases has a crucial role in criminal justice practice, which not only helps to ensure judicial justice and improve the efficiency of litigation, but also effectively safeguards the legitimate rights and interests of the parties. With regard to the unification of cases of severance of the applicable standards, this paper believes that mainly from the following three aspects:

First, to clarify the “parallel processing of cases as the main, severance of cases as a complementary” principle. Emphasize the severance of cases can only be used as an auxiliary means, only in some special

circumstances can be applied “severance of cases”, at the same time, it is necessary to strengthen the punishment for the abuse of the severance of cases handling to truly realize its value. For example, the decision to severance of cases in violation of the law should be included in the scope of procedural sanctions. Only with the relevant sanctions can abusive and illegal behavior be curbed. This move is conducive to safeguarding the legitimate rights and interests of the parties concerned, and restrains the right to decide on severance of cases at the legal level.

Secondly, the scope of application of severance of cases should be detailed. The scope of application of severance of cases refers to when and under what circumstances severance of cases can be applied. Although the “Guiding Opinions” provide for the severance of cases and the prohibition of their application, their content is too broad and is not conducive to the uniformity of the application of severance of cases. Therefore, it should be expanded in the following areas: first, it should improve the scope of application for the protection of special groups. The “Guiding Opinions” only provide for the case of minors, but not for criminal suspects and defendants from other special groups, such as the deaf and dumb. The second is the expansion of cases of severance of cases. For example, in the case of joint crimes, some criminal suspects plead guilty and some do not plead guilty, etc. Provisions are made to make them more in line with the needs of time, so as to appropriately reduce the discretion of the relevant public officials.

Thirdly, the applicable procedures for the severance of cases should be improved. The system for the severance of cases should be clearly defined and systematized in order to regulate the conduct of public officials and prevent abuse. In addition, the system of severance of cases should be improved by specifying that all materials involved in the severance of cases should be submitted. For example, the “Russian Federal Code of Criminal Procedure” clearly stipulates that: “When a criminal case is split up, the materials shall be transferred with it, and the materials of the split case shall include the originals of the procedural documents of significance to the case, or copies of the procedural documents that have been confirmed as correct by the signature of the investigating officer or inquiry officer.”⁸ For cases that are handled separately, they should be re-investigated, if necessary, and dealt with properly.

3.3. Strengthening the supervision of the severance of cases

One is to strengthen internal supervision of the severance of cases, which includes: first, the establishment of an internal supervision mechanism: setting up a specialized supervision department or design-

⁸ Wang Ya-xin, Liu Rong-jun. Procedural Justice and Litigation. Beijing : China University of Political Science and Law Press, 1996. P. 4.

nating a person to supervise the implementation of the severance of cases, so as to prevent corruption and abuse of power by internal personnel. The second is the simultaneous introduction of peer review: through the establishment of a peer review mechanism, professionals at the same and higher levels can assess and supervise the procedures and results of the severance of cases. Thirdly, periodic public assessment: regular public reviews are conducted to monitor whether the practice of severance of cases is standardized in order to achieve the desired results. Fourth, conduct regular training and education for relevant personnel: Provide regular education and training for court staff and public security personnel to enhance their understanding of the severance of cases mechanism and their ability to implement it, so as to prevent erroneous implementation due to a lack of knowledge and skills.

In addition to strengthening internal supervision of severance of cases within the public security and judicial organs, external supervision of the application of severance of cases should also be strengthened. In this regard, the supervision by the procuratorial authorities should be improved. The procuratorate is the organ that participates in the entire process of criminal proceedings, and exercises legal supervision over criminal proceedings in accordance with the law. The paper argues that the procuratorial authorities should be legally authorized to supervise matters relating to the severance of cases. Specifically, this may include: the first people's procuratorate shall have the right to examine the materials for the severance of cases decided by the investigating authorities, and shall require them to be made up if they do not meet the conditions; if they are not made up within the prescribed period of time and do not comply with the provisions for the severance of cases, the procuratorate may, in the light of the actual circumstances, revoke the decision for the severance of cases. Where the second people's procuratorate finds in the course of its examination that the severance of cases is unlawful, it is authorized to revoke the decision and transfer the person concerned to the relevant department for processing. The third people's procuratorate has the right to question and require the handling of severance of cases for a prolonged period of time after they have been dealt with or downgraded.

Another is to strengthen public supervision. Public supervision plays a pivotal role in the severance of cases. In our country, although the severance of cases mechanism has entered the rule of law, but the degree of public participation is still relatively low. Therefore, the principle of openness should be upheld as a necessity, and judicial disclosure should be carried out in addition to cases involving State se-

crets, commercial secrets and personal privacy, which should not be made public.

3.4. Enhance the protection of the rights of the parties involved

An important issue involved in the severance of cases is that the rights of the parties involved are not guaranteed. This is mainly manifested in two aspects: one is that after the severance of cases, the absence of relevant personnel in the case results in the defendant's right to testify and defense not being guaranteed; and the second is that the parties involved to the relevant organs decide to deal with the results of the severance of cases cannot find relief procedures. The first point is the problem of procedural application, and the second point involves the problem of judicial relief. Therefore, this paper believes that the severance of cases should be improved from two aspects in terms of judicial remedies:

One is to ensure that co-defendants who have been dealt with separately appear in court to testify. According to Chinese law, witness testimony must be prosecuted and defended by both sides of the questioning and verification, in order to serve as the basis for the case.⁹ As a "separate case" testimony "previous case" statement, because of its own powerful relationship, so it cannot be directly converted into testimony. Must be examined by the court as a witness testimony can be used as a conviction and sentencing considerations, to ensure that the defendant's right to confrontation.

Another is to give the parties involved the right to raise objections. A system that only allows the parties to passive choice, the basis of justice is lost, contrary to the spirit of the law. In response to the issue of the party's right to relief in the severance of cases, this paper argues that it should be given the relevant right to raise objections to the relevant authorities when the party involved believes that its rights have been infringed upon, and that the relevant authorities must respond within a certain period of time. For example, Article 13 (2) and Article 4 of the "German Code of Criminal Procedure" stipulate that, if a situation arises or is found to be unsuitable for consolidation before the court trial, and the prosecutor's office objects to the separation or consolidation of the court trial, it has the power to file a protest against. After the commencement of the trial, the court may, on the application of the procuratorate or the defendant or ex officio, decide to sever or join criminal cases that are interrelated.¹⁰ This can avoid arbitrary severance of cases and abuse of power by the authorities concerned, and to a certain extent, it strengthens the protection of the litigation rights of the parties concerned.

⁹ Liu Ren-wen. Op. cit. P. 144.

¹⁰ German Criminal Procedure Code / Translated by Zong Yu-kun. Beijing : Intellectual Property Press, 2013. P. 8.

4. Conclusion

The article discusses the complexity and importance of the mechanism of criminal severance of cases, and by analyzing the current problems and causes of severance of cases, it is found that although severance of cases provides flexibility and efficiency to the criminal justice system in theory, in practice, due to the problems of unsound legal frameworks, imperfect social supervision mechanisms, and backward concepts of law enforcement officials, severance of cases deviates from its original goal in judicial practice, and this has led to many cases of injustice and abuse of power. Therefore, in order to ensure the fair and efficient operation of the severance of cases mechanism, this paper puts forward a series of recommendations for improvement, including

supplementing and perfecting the relevant laws, establishing a sound monitoring mechanism, and providing adequate channels for judicial relief, with the aim of providing more effective solutions for cases that have been unfairly handled. It is only when these recommendations are effectively implemented that the mechanism for the severance of cases can truly play its positive role in criminal proceedings. This requires the full cooperation of lawmakers, law enforcement officials and all sectors of society to continuously optimize the legal system and enhance public legal awareness while strengthening the professional ethics and legal training of law enforcement officials. After all, the realization of fair and efficient criminal justice is a long-term and arduous task that requires the joint progress and efforts of the law, society and individuals.

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