

The Difference between Public Interest Litigation and Private Interest Litigation in China

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Abstract:

As a common system in the world, the basic connotation of public interest litigation is the basis of studying various public interest litigation modes. The public interest litigation is the product of creative judicial engineering, which has specific social conditions and background. The connotation of public interest litigation has been experienced sufficient academic discussion and reflection at home and abroad, which lays a foundation for comparative study. On the surface, public interest litigation and private interest litigation seem to be a pair of contradictions. There are differences in litigation function, plaintiff qualification, right relief, litigation procedure and judicial effect between them. But in fact, they are unified and dialectical which helps to reduce the conflict and opposition between them.

Keywords: *public interest, litigation, difference, private interest litigation, dialectical unity.*

I. BACKGROUND ANALYSIS OF PUBLIC INTEREST LITIGATION

Public interest litigation is also called public law litigation, modern litigation. Although in different historical periods public interest litigation have different appellations, but the purpose of litigation is basically stable. Public interest litigation is intended for the public interest. Public interest litigation has appeared in ancient Rome. But the public interest litigation in modern sense is from United States. The traditional legal system of the United States focused on protecting private interests. Litigation was not initiated to safeguard public interests. Most lawsuits were still committed to promoting private interests, such as property interests, contract interests and personality rights interests. In other words, the traditional law was not designed to protect the public interest. However, with the advancement of industrialization, urbanization and globalization, the social structure of the United States has changed, and the cases of infringement of public interest and basic right of citizens are increasing.[1] So some scholars have pointed out that "a large number of social conflicts are the basis for certain forms of litigation".[2]In American democratic society, the ideal public policy model is that citizens pass their wishes to legislator through ballot. Legislators reflect the value choices of the majority in the legislative direction , and the administrative agencies achieve these value goals by providing fair public services to citizens. However, the voice of citizens on policy issues has almost never been heard, and citizens can not solve the social contradictions such as environmental pollution and consumption pollution through policy change.[3]Due to the lag of legislation and the slack of government departments, many public interest disputes which were originally suitable for legislative or administrative settlement have to pour into the judicial

department. People also expect the judiciary to respond to the needs of human society for justice.

In this context, the judicial organs change their roles from the traditional passive neutrality to the active judicature to maintain social fairness and justice. They believe that if they do not make substantial contributions to social justice, the modern judicial institutions can no longer obtain social and political legitimacy. So the judicial institutions have carried out effective work around substantive justice. For example, those vulnerable groups are deprived of access to justice due to poverty, illiteracy, ignorance and backwardness. In order to facilitate access to justice by all sectors of the society, the judicial institutions strive to eliminate the poverty barriers between the poor and the judicial system, and strive to form a new precedent to enable ordinary people, especially marginal groups, to have access to justice. It can be said that public interest litigation is an effective weapon of creative judicial engineering. It endows judicial organs with power and makes it become the carrier of social justice and an effective means of social transformation.[4]Brown v. Board of education has become a milestone of public interest litigation in the United States. The lawsuit changed the segregation and discrimination policy against black people in the field of education, and announced the end of school segregation. This case was a typical public interest litigation mode. The judiciary sought relief for thousands or even millions of ordinary people according to the constitutional principles and public interest laws and regulations. The case has become the system origin of public interest litigation.[5]Since then, the public interest litigation has gone from the United States to many countries and regions. Modern litigation has become an important tool to solve public nuisance disputes, safeguard social public interests, safeguard the interests of vulnerable groups and diffuse groups, and realize substantive justice. The PIL uses litigation to change the existing power and privilege mode. It promotes the implementation of the existing laws and social governance.

II. A COMPARATIVE STUDY ON THE BASIC CONNOTATION OF PUBLIC INTEREST LITIGATION

Since the public interest litigation has moved from the United States to the world, there has not been a unified understanding of public interest litigation in theory. That is, there is no unified concept expression. Public interest litigation is a legal concept that transcends national boundaries, different systems and cultures, so it is often unable to provide a single, cross-cultural and effective definition of the concept.[6]Therefore, the research on the connotation of the public interest litigation at home and abroad is diversified.

Chinese scholars' representative views on the connotation of public interest litigation. Some scholars believe that the public interest litigation refers to the legal system in which procuratorial organs, social organizations and individuals sue the court for acts that damage social and public interests according to the law. It includes the following contents: the plaintiff qualification o, the content of public interest litigation appeal, the specific types and the object of public interest litigation.[7]The above definition is slightly inappropriate in the subject and object of litigation, because in addition to procuratorial organs, social organizations and individuals, administrative organs, as the main body of safeguarding social and public interest, should also enjoy the right of action. The object of public interest litigation should not be limited

to administrative organs and enterprises, all actors who infringe on social and public interest should be included in the scope of being sued which includes administrative organs, enterprises and natural persons. Some scholars believe that there are three types of public interest litigation: the public interest litigation in the form of other interests, the public interest litigation in the form of self-interest, and the public interest litigation in the form of legal aid. They think that there are three different understandings of public interest litigation, in the literal sense, in the procedural law, and in the sense of civil rights movement.[8]The main feature of this definition is that the commonness of the three types of public interest litigation contain elements of public interest. The difference lies in whether the litigation contains private interests. The public interest litigation should be a public interest litigation in a pure sense or a narrow sense. The plaintiff has no direct interest in the case, and the purpose of the litigation is for the public interest. Some scholars split the definition of public interest litigation, and think that the definition should include three aspects: what is the content of litigation protection, who can file a lawsuit and what is the type of litigation. It is also considered that public interest litigation is civil or administrative litigation that a specific subject brings to the court for the conduct of damaging social and public interests.[9]This definition is basically consistent with the current public interest litigation system in China, but administrative public interest litigation is mainly initiated by the procuratorial organs, and natural persons and social organizations do not enjoy the litigation right of administrative public interest litigation. Therefore, we can define them separately, which is helpful to clarify the different procedural norms of the two types of litigation.

Foreign scholars' main views on the connotation of public interest litigation. The public interest litigation is a specific legal and cultural phenomenon developed in the United States and spreaded to other parts of the world. It seems that public interest litigation has been developed in many different countries, reflecting the common background. However, under specific conditions, it takes different forms which are consistent with the domestic political and cultural system. Due to the differences of political system and culture in different countries, the connotation of public interest litigation in foreign countries also presents the characteristics of diversity. What is public interest litigation? Public interest litigation is described as many similar terms: human rights litigation, strategic litigation, experimental litigation, impact litigation, social litigation and social change litigation and so on. Some scholars think that the definition of public interest litigation is to reform legal rules, implement existing laws, clarify public norms and seek social change through court decrees. Others think that public interest litigation should focus on the interests of vulnerable groups, and help the society to produce systematic policy change..[10]After analysis, the definition of public interest litigation by foreign scholars mainly includes the following aspects: firstly, public interest litigation in the sense of civil rights. That is to say, the public interest litigation is a struggle for the vulnerable groups to solve the social and economic problems caused by the differences and unequal distribution of opportunities and rights in the society.[11]Public interest litigation is usually a creative judicial weapon innovated by the supreme judicial organ through judicial activism. Its purpose is to protect the rights and interests of the marginal social strata. They are backward in society, lose consciousness in politics, and are forced and exploited economically. It is in this context, the scholar describes public interest litigation as a strategic branch of legal aid action, which aims to enable the poor people to get justice. Therefore, the court has developed a new mode of judicial procedure, trying its best to play a positive role through the judicial organs to ensure that those who can not resort to judicial procedures for

various reasons can have access to justice.[12]The main characteristics of the definition in the sense of civil rights movement is that public interest litigation is regarded as a way for social vulnerable groups to fight for rights. The content of litigation is the difference and unequal distribution of opportunities and rights in society. The focus of attention is on the needs and interests of groups excluded from conventional politics for a long time. In order to maintain fairness and justice, we need to strengthen the protection of the rights and interests of vulnerable groups through justice, and promote the reform of law and policy.

Secondly, public interest litigation in the sense of procedural law. This concept emphasizes the public character of public interest litigation and the plaintiff has no interest relationship with the case. For example, some scholars believe that public interest litigation is a basic right, usually constitutional right, or the possibility of providing opportunities for democratic governments to correct their mistakes through the courts.[13]Public interest litigation in the sense of procedural law is more similar to modern litigation. Its starting point is to protect the public interest, reflecting the strong public nature. Most of the plaintiffs seek judicial protection from the court in order to safeguard the public interest. The plaintiffs have no direct interest relationship with the case. The prosecution is purely for public interest or objective legal order, not for subjective private interest.

By comparing the views on the connotation of public interest litigation at home and abroad, the author believes that the so-called public interest litigation refers to the civil public interest litigation and administrative public interest litigation brought by specific subjects to the people's court in accordance with the law on the premise of infringement of national interest and social public interest. According to China's current legal provisions, the specific subjects mainly include the organizations stipulated by the law, administrative organs and procuratorial organs. This subjects have no direct interest relationship with the sued cases, and at present, citizens can not become the subject of public interest litigation. The purpose of litigation is only to protect the interests of the unspecified majority. That is, the purpose of public interest litigation is limited to the protection of public interest. It is a pure public interest litigation, rather than a mixed action of public interest and private interest. In terms of types, public interest litigation includes civil public interest litigation and administrative public interest litigation. Civil public interest litigation is a lawsuit that specific subjects bring to the court for civil illegal acts that infringe on social and public interests according to the law. Administrative public interest litigation refers to the litigation that is brought to the court according to law against the administrative subject's illegal exercise of power or omission to cause damage to public interests.

III. THE DIFFERENCE BETWEEN PUBLIC INTEREST LITIGATION AND PRIVATE INTEREST LITIGATION

In the traditional private interest disputes, litigation was regarded as a means to solve the right dispute between individuals. This kind of attention to the dispute of private rights more or less determined the basic elements of the traditional private interest litigation mode: Firstly, the lawsuit is polarized. Both parties are involved in a confrontational dispute. The court will make a decision on the basis of the trial. Secondly, litigation has retrospective effect. Disputes are about completed events, and litigation aims to

determine the legal consequences of past events. Thirdly, right and remedy are interdependent logical relations. The purpose of litigation is to remedy the rights, and the scope of relief is based on the damage to rights. Fourthly, litigation is a self-contained episode, and the influence of judgment is limited to the parties. Fifthly, the litigation process is initiated and controlled by the parties. The judge is in a passive and neutral position.[14]It can be concluded that the main characteristics of the traditional private litigation are the antagonism of the parties, the retroactivity of the litigation, the interdependence of the right and remedy, the nonextension of the judicial effect, and the party centrism in the litigation process.

Public interest litigation refers to the use of litigation by individuals and organizations to exercise collective rights or influence social change. Its purpose is to promote and safeguard public interests. Therefore, public interest litigation often challenges public policy. The object of public interest litigation is not the dispute between private parties, but the dissatisfaction with government policy or government behavior Public interest litigation is the product of dynamic judicial engineering, which allows the third party public interest representatives to intervene in the judicial process. It is a kind of cooperation lawsuit involving the court, the parties and the government, which jointly realize the legal or constitutional commitment to social justice, rule of law, good governance and basic human rights.

Therefore, the main differences between public interest litigation and private interest litigation are litigation function, plaintiff qualification, right relief and judicial effect. Firstly, about the litigation function, the private interest litigation is very simple, only to solve disputes and protect private legitimate rights between private parties. The public interest litigation functions are slightly complex, ostensibly to protect the interests of an unspecified majority, but in fact it is a means of social change litigation. The parties of public interest litigation do not advocate private interests. Its purpose is to express general dissatisfaction with public policies, and to change the unreasonable policies through litigation, so as to pursue the goal of promoting social reform. Public interest litigation is an important participatory activity. For the vulnerable groups at the edge of society, public interest litigation sometimes provides the only or the cheapest opportunity to enter the political life at a certain time, and becomes an effective way to participate in the political process. The protection of their interests helps to minimize the possibility of future violent conflicts. It can be said that public interest litigation is also a tool for peace building.

Secondly, about the plaintiff qualification, private interest litigation embodies the confrontation between the two parties. The parties must have a direct interest in the case, and safeguard certain specific legal interests. However, in public interest litigation, this theoretical standard of legal interest limits the protection of public interest. Therefore, the judicial organ has weakened the special requirement of direct interest relationship between the plaintiff and the facts of the case, and tried to break through the scope of plaintiff qualification.[15]It is generally regarded as a breakthrough to the traditional private law to replace the standard of legal interest with the standard of factual damage.

Thirdly, about the right relief, in the traditional private interest litigation, rights and remedies are interdependent. If there is no remedy, there will be no right. The relief logically originates from the defendant's violation of substantive obligations or responsibilities. The right relief embodies the

compensation, and the influence is limited to the direct parties. In public interest litigation, there is no close logical relationship between rights and remedies. Relief is often forward-looking, flexible and remedial, which has a wide impact on the unspecified majority, even the absentees. The relief sought by the public interest litigation focuses on the future and is corrective rather than compensatory. Therefore, the judgment made by the court on public interest litigation is not a decree to solve private disputes, but rather an administrative order. It is a plan for the future, aiming at adjusting future behaviors rather than making up for past mistakes. Its purpose is to achieve a wide range of public policy objectives under complex and sustained actual conditions.

Fourthly, about the judicial effect, the judgment in private interest litigation is used to solve the disputes between individuals. The scope of the subject of the judgment is only related to both parties of the lawsuit. The direct effect of the judicial judgment should not exceed the scope of the actual parties in the procedure, and has no binding force on other people. It reflects the specific relationship between the court and the parties. The aim of public interest litigation is to prove the legitimacy of public policy. The judgment of public interest litigation has an impact on the direct parties who attend the court, and also has a wide impact on the unspecified majority who do not attend the court. The effectiveness of the judgment will certainly exceed the scope of the parties who actually participate in the proceedings, and can be applied to the unspecified majority of people, which reflects the expansibility of the judgment effect.

IV. SUMMARY

On the surface, public interest litigation and private interest litigation seem to be a pair of contradictions. There are differences in litigation function, plaintiff qualification, right relief and judicial effect, as well as differences in specific legal principles and procedures of litigation. However, in fact, they are also unified and integrated, not absolutely opposite. Sometimes it is difficult to define the boundary between public interest litigation and private interest litigation. Because private interest litigation can regulate private behavior and maintain social order to some extent. Therefore, the private interest litigation itself implies the effect of protecting public interest. As a result, some scholars think that private interest litigation itself has the nature of protecting public interest, and civil private interest litigation and civil public interest litigation should not be divided into two parts.[16]Public interest litigation defends the interest of an unspecified majority, which is composed of thousands of unspecified private interest. Public interest is actually a private interest in a larger scope. Therefore, it creates favorable conditions for the realization of private interest while protecting public interest. Therefore, the relationship between public interest litigation and private interest litigation is dialectical unity, especially in procedural jurisprudence and application of litigation procedure. However, it is still necessary to study the procedural differences between public interest litigation and private interest litigation, especially the litigation initiated by different subjects, so as to provide theoretical support for legislative reform and judicial practice.

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