

Optimization of Litigant Entities and Institutional Adaptation in Personal Information Public Interest Litigation

LIU, Liyuan ^{1*}

¹ Xinjiang Normal University School of Political Science and Law, China

* LIU, Liyuan is the corresponding author, E-mail: 230922995@qq.com

Abstract: With the rapid development of mobile Internet, the protection of personal information is becoming more and more serious. The actual rights and obligations between individuals as the most preventive subject in the Internet world and information users are gradually out of balance. From a technical point of view, compared with other subjects, individuals are faced with information infringement. Their ability to safeguard their rights is also relatively weak. In the long run, the right of citizens to protect personal information given by law may be useless. To this end, China issued the "Personal Information Protection Law" in 2021 to make structural provisions for personal information protection civil public interest litigation to cope with the increasingly severe situation of personal information protection. As a new form of public interest litigation, its system still needs to be improved.

Keywords: Personal Information Protection, Public Interest Litigation, Procuratorial Organs, Punitive Damages.

Disciplines: Law.

Subjects: Commercial Law.

DOI: <https://doi.org/10.70393/6a6574626d.323638>

ARK: <https://n2t.net/ark:/40704/JETBM.v2n1a01>

With the in-depth development of the Internet era and the rapid popularization of personal mobile terminals, the degree of individual integration into information technology is increasing day by day. The platform with monopoly nature of the Internet is gradually formed, and the threat of algorithm black box to citizen information is further improved. On this basis, it is necessary and timely to clarify the legality of the civil public interest litigation system of personal information after the introduction of the Personal Information Protection Law. With the rapid development of artificial intelligence, artificial intelligence algorithms represented by ChatGPT have reshaped the Internet ecology, making personal information subject to a more new and urgent threat. Therefore, it is necessary to discuss the subject of the civil public interest litigation system of personal information, so as to protect the rights and interests of personal information security in the new era more quickly. Personal information protection public interest litigation is a new field of public interest litigation. Although its litigation subject has principled provisions in the Personal Information Protection Law, it lacks specific direction. Therefore, in practice, there will be many derivative problems, which need to be further analyzed.

1 THE NECESSITY OF THE SUBJECT ANALYSIS OF THE CIVIL PUBLIC INTEREST LITIGATION SYSTEM OF PERSONAL INFORMATION PROTECTION

The development of civil public interest litigation for personal information protection began with the weak relief mode of private interest litigation. Pure private law protection and public law protection cannot take into account the interests of both. According to the principle of law and economics, whether the parties choose to maintain their rights depends on the cost of litigation and the size of the expected benefits [1]. With the rapid popularization of Internet mobile terminals, the number of Chinese netizens has reached 1.067 billion. The rapid development of the Internet industry and the lack of awareness of personal information protection, the lack of relevant systems for personal information protection information, the difficulty of tracking personal information infringement, and the disproportion between personal information infringement profit and punishment lead to a high incidence of personal information infringement. The number of personal information infringement cases is relatively small, which is not a good thing, because it is not because citizens do not need to go through the judicial

process to protect their rights and interests. It is precisely because the masses do not know, the threshold of the judicial process is too high, and the infringer is in a state of relative imbalance of rights compared with the infringer who infringes on the personal information of others.

1.1 THEORETICAL NECESSITY: THE FUNCTIONAL PARTICULARITY OF THE SUBJECT OF PUBLIC INTEREST LITIGATION

The choice of judicial organs is modest. In the era of big data, due to the disparity between economic strength and technical strength, the status of network platform operators and information subjects is not equal. Even if the personal information subjects find that their information rights and interests are infringed, for the sake of economic benefits, the willingness to file private interest litigation to seek rights relief is not high [2]. The infringement of personal information is relatively secret. A large number of citizens information is leaked without self-knowledge. The victims do not even know that their rights and interests are infringed. According to their own modesty, the judicial organs will not investigate, which greatly reduces the risk of personal information infringement cases being found, and also makes such cases more rampant.

Personal information infringement is hidden. Citizens perception of personal information infringement is not high, unless they encounter personal threats. Individual citizens perception of personal information is often limited to a variety of promotional information; however, in fact, the leakage of personal information has a great impact on citizens. Whether it is the consumption analysis of personal preferences, the behavior prediction of personal information, or the occurrence of telecommunications fraud or even homicide, robbery, rape and other vicious cases, there is a background analysis of the leaked personal information as the background analysis before the infringer's behavior. It can be said that the pre-illegal acts of the high-frequency telecom fraud cases in the country a period of time ago are the large-scale leakage of personal information, which provides a low-cost way for domestic and foreign criminal forces to use large amounts of personal information to screen potential suitable personnel by means of big data.

1.2 REALISTIC NECESSITY: THE IMBALANCE OF RIGHTS UNDER DATA CAPITALIZATION

The private rights of personal information production factors are weakened. In the process of marketization of data elements, the private right attribute of personal information as a new factor of production shows a structural weakening trend. According to the perspective of political economy, the wave of data capitalization alienates personal information into non-competitive resources that can be infinitely replicated, resulting in the elimination of exclusivity and control rights in traditional property rights theory. This

weakening of rights has directly spawned a data enclosure movement: "enterprises systematically avoid rule risks through technical means such as covert authorization agreements and compound data capture". This weakening of private rights further induces the race-to-the-bottom effect of the market, forming a vicious circle of data plunder. In order to reduce compliance costs, platforms generally adopt a minimization compliance strategy-only symbolic rectification during the special governance of the regulatory authorities, and excessive data collection through the algorithm black box in daily operations. This serious inversion of illegal cost-benefit essentially constitutes a disguised incentive for data predatory behavior, causing the market to fall into the tragedy of the commons dilemma.

Public interest crisis in the dimension of national security. The large-scale leakage of personal information will also bring potential huge hidden dangers to national security. In the Internet age, citizens Internet information security is an important part of the overall national security. Through the large-scale flow of personal information from personal information infringement, through the systematic calculation of big data, the daily data is classified and screened, which is enough to integrate the big data of another country. This is entirely possible and common Internet big data analysis. And through the analysis of key personal information, we can calculate the specific tasks undertaken by different people, and it is entirely possible to carry out targeted clearance of key tasks of national key positions. Targeted telecom fraud against individuals with surplus wealth in the country will also further threaten the country's economic development security.

1.3 INSTITUTIONAL NECESSITY: THE URGENCY OF LEGAL SUPPLY

The new law formally solves the problem of the legitimacy of the public interest litigation mechanism applicable to the protection of personal information and the normative basis of the public interest litigation of personal information protection, but the situation of personal information protection is still grim. It can be seen that the public interest protection for personal information security already has a legal basis, but the further improvement of the system still lacks corresponding practical verification. China is now in a special period of growth of personal information infringement cases. Therefore, in order to alleviate the severe situation faced by personal information protection, it is urgent to establish a complete civil public interest litigation system for personal information protection. It is clear that the subject of litigation is the precondition for the construction of this system.

2 THE AMBIGUITY OF THE SUBJECT RESTRICTS THE EFFECTIVENESS OF PUBLIC INTEREST LITIGATION.

The eligibility of plaintiffs in civil public interest litigation for personal information protection needs to be based on legal provisions and define the actual problems. The problem is pluralistic, and its main contradiction is changing. In different cases, it is possible that legal factors are the main focus of debate, technical factors are the key to overcome difficulties, and consumer rights protection is the key to the case. Therefore, we must carefully select the subject according to the actual case changes.

2.1 OBSTACLES TO SYSTEM IMPLEMENTATION CAUSED BY SUBJECT AMBIGUITY

In the public interest litigation of personal information, individuals are not qualified litigation initiators, but only special organizations can initiate litigation. This is of course the protection of personal rights and interests, is the saving of judicial resources, but it is also a restriction on the individual's legal right to initiate a lawsuit to protect personal information. In the face of personal information infringers with a significant advantage over individuals, such as Internet platforms or personal information theft gangs, it is difficult for individuals to protect their own information, and it is easy to face direct threats from infringers due to the disclosure of personal information. The organizations confirmed by the people's procuratorate, consumer organizations and network information departments can make up for this deficiency.

Therefore, the core part of the system design of the prosecution is to open up the connection channel between the individual and the organization with the right to sue. Since we want to open this connection channel, we must solve who to connect? Connect what? The problem of how to connect. It is necessary to clarify the boundary of the abstract subject stipulated by the law, that is, to solve the problem of who will connect, and who will not solve the problem. What kind of subject enters the litigation procedure of civil public interest litigation for personal information protection has become an outstanding difficulty. In order to make this system of protecting citizens information security a real solid armor for protecting personal information security, it is necessary to unveil the subject of personal information protection civil public interest litigation.

2.2 THE LEGISLATIVE TURN FROM ABSTRACT ELIGIBILITY TO SPECIFIC EMPOWERMENT

The boundaries of consumer organizations, which level, or what conditions can be met as plaintiffs in public interest litigation of personal information? Is only the municipal consumer associations above can be qualified plaintiff? Or

grassroots consumer associations and even consumer contact stations can be used as plaintiffs? Which department should the national network information department be? What are the organizations identified by the national network information department? What is the standard? The definition of this part is ambiguous. It should be refined in other regulations and is convenient for all citizens to understand and query. If there is only such vague provisions, it will greatly increase the cost of personal information protection for citizens. The intention of setting up the civil public interest litigation system of personal information should be to protect the personal information security of citizens more conveniently in the era of imbalance of personal information rights, in the era of serious threat to personal information security, to form a perfect institutionalized design of personal information protection at the social level, and to form a firm cornerstone of national information security. If the subject has been ambiguous. The barrier that citizens should protect personal information security will become a natural barrier that prevents citizens from realizing the protection of personal rights and interests.

3 THE SUBJECT QUALIFICATION OF PUBLIC INTEREST LITIGATION OF CONSUMER ORGANIZATIONS

The litigation status of consumer rights protection organizations has not been detailed in the civil public interest litigation system of personal information, but the relatively mature consumer rights protection system can maintain us to provide a relatively mature reference. According to the provisions of Article 47 of the Law on the Protection of Consumer Rights and Interests: "The Consumers' Association of China and the consumer associations established in provinces, autonomous regions and municipalities directly under the Central Government may bring a lawsuit to the people's court against acts that infringe on the legitimate rights and interests of many consumers". Strengthening the protection of consumers has become the consensus of all countries in the world [3]. The "Consumer Protection Law" limits the prosecution subject of consumer public interest litigation to consumer associations above the provincial level. Its comprehensive consideration is that consumer associations above the provincial level have more professional qualifications, more abundant resources, and do not cause serious abuse of power. The consumer rights protection system proves that in terms of actual rights comparison, the consumer associations at or above the provincial level are stipulated as qualified plaintiffs, which can effectively counter the factual advantages of the infringing organizations and effectively counter the substantive social advantages of the infringers of personal information protection. And each level of consumer rights protection organization has the obligation to pass on citizens claims step by step to ensure that qualified litigation can be successfully prosecuted. If the consumer rights organizations

below the provincial level become the main body of civil public interest litigation for personal information protection, although it seems that it is easier for ordinary people to initiate litigation, their relatively weak ability, poor radiation range and relatively weak professional ability and cost make their participation unable to effectively counter the dominant position and professional ability of personal information infringers, so that the legitimate rights and interests of citizens cannot be well protected. Let the national consumer rights protection organization directly assume the qualification and function of the subject of personal information protection civil public interest litigation, it will give the national consumer rights protection organization a greater pressure on the affairs, making it tired of running, which is not conducive to the overall grasp of the overall consumer rights protection; under the background of endless civil lawsuits for personal information protection across the country, focusing this function on national consumer rights protection organizations will generate huge transportation, logistics, and time costs, which will discourage rights holders whose personal information is violated. It is contrary to the original intention of the system design. Therefore, it is appropriate and necessary for provincial consumer rights protection organizations to assume the main function of personal information protection, that is, public interest litigation.

4 THE CONSTRUCTION OF THE LITIGATION SUBJECT STATUS OF THE NATIONAL NETWORK INFORMATION DEPARTMENT

The national network information department is the national network information management department of the integration of a wide variety of complex relations, but also the country on information security, information protection, Internet operation of the most important network power. Therefore, if we want to uncover the dark curtain of personal information infringement at the technical level, we must mobilize this key force.

4.1 LEGAL FUNCTIONS: CLARIFY THE SPECIFIC POSITIONING OF THE DIRECTION OF AUTHORITY.

For the delineation of the national network information department, we should also define its level. Since it is a national network information management department, it must not include information management departments at the provincial level and below, which is in line with the basic requirements of literal interpretation. Objectively, the network information department below the national level does not have the ability and authority to review, so as to avoid confusion. At present, the organs that perform the functions of Internet information management at the national level are complicated, and the relationship is complicated. They have the advantages of partition management in their

respective professional fields. Culture, health, public security, medical care, education, industry and information have corresponding functions, but they also cause many problems. From a practical point of view, civil public interest litigation filed by administrative organs is rare, and administrative organs have not really become the main body of civil public interest litigation [4]. Among the above departments, the network information management agency under the functional department has less authority, only focuses on its professional field, and radiates its functions outside the field. It is not appropriate to transcend both ability and power, so it is only a subsidiary of the field to connect Internet+. Therefore, the national network information department stipulated in the Personal Information Protection Law is ready to come out. It should be pointed out that the department specializing in this function is the National Network Information Management Office.

4.2 ORGANIZATIONAL ADAPTATION: DETERMINING DYNAMIC ACCESS MECHANISMS

The National Network Information Office should perform its functions and powers to confirm that it can act as an organization for personal information public interest litigation. Subjectively, in view of the purpose of selecting the organization is to better protect the rights and interests of individuals, then the network office should reach an agreement between the two parties when selecting the organization; objectively, the organization that the national network information department should determine should meet the professionalism and have a certain technical reserve, so as to facilitate the determination of the facts of the case; secondly, it should have a certain scale, have the corresponding ability to participate in public interest litigation and resist the influence of infringement organizations. At least, it should be given to the social organization registered by the civil affairs department of the municipal people's government in the district to sue. It is not appropriate to raise the prosecution threshold of social organizations, and there should be no illegal records. To this end, the national network credit organization needs to develop a rigorous evaluation mechanism. The National Network Information Office determines that the organization should be mobile rather than fixed, and should be reviewed regularly, that is, if a new organization meets the selection criteria and is willing to participate in the public interest litigation of personal information, it should be added in time, and if it does not meet the criteria, it should be withdrawn in time. After determining the organization, the National Network Information Office should publicize it in a timely manner in a way that is convenient for the public to receive. The content of the publicity should include the address, contact information, and expertise, and be dynamically updated to ensure that the public can easily know the query through multiple channels, and it is also easy to choose the appropriate organization to seek help.

5 THE DYNAMIC ADJUSTMENT MECHANISM OF THE LITIGATION ORDER OF PROCURATORIAL ORGANS

In civil public interest litigation for personal information protection, the dynamic adjustment mechanism of the litigation order of the procuratorial organs is a key institutional supply to balance judicial initiative and restraint. Based on the institutional framework of the Personal Information Protection Law, the People's Procuratorate should not only fulfill its constitutional mission of protecting public interests and leverage its advantages of a complete judicial structure and strong resource integration, but also establish flexible rules of hierarchical response and composite linkage, and prioritize prosecution based on the degree of infringement harm to ensure precise intervention in major cases; To address systemic infringement across regions and multiple platforms, explore a composite subject model of prosecutorial leadership, administrative collaboration, and technical assistance. Through institutional innovation, break the boundary of single subject capabilities and achieve dual optimization of public welfare relief efficiency and judicial resource intensification.

5.1 THE PEOPLE'S PROCURATORATE HAS THE NATURAL MISSION OF PUBLIC WELFARE PROTECTION.

The Supreme People's Court also believes that : "The people 's Procuratorate filed a civil public interest litigation as a public interest litigant, and the rights and obligations of the litigation refer to the provisions of the Civil Procedure Law on the rights and obligations of the plaintiff's litigation". In summary, it can be seen that in the perspective of the people's court, the people's procuratorate is basically regarded as the plaintiff in civil litigation. The plaintiff positioning of the People's Procuratorate has broken through the second order of Article 58 of the Civil Procedure Law in terms of personal information protection. The people's procuratorate has a strong legal team, strong litigation status, standardized litigation procedures, stable credibility among the people, and its mature organization is convenient for citizens to seek help. In 2021, when the Personal Information Protection Law was promulgated, the procuratorial organs handled more than 2,000 public interest cases in the field of personal information protection. Facing the era of rapid expansion of artificial intelligence and imbalance of information rights, evidence collection and responsibility identification under the cover of the black box of the algorithm make it more difficult than ever before. It is very urgent and necessary to have a team of state organs with citizens trust and excellent professional quality to protect the legitimate rights and interests of citizens personal information. And the people's procuratorate has obvious system advantages.

5.2 THE PEOPLE'S PROCURATORATE HAS A MATURE AND COMPLETE JUDICIAL FRAMEWORK.

After more than 70 years of development, the People's Procuratorate of China has formed a national public prosecution organ with complete system, clear structure, distinct level and clear function, which is recognized by the people. The people are convenient to seek help from the people's procuratorate, and the people's procuratorate also has the corresponding social advantage position to deal with the personal information infringer. Therefore, the people's procuratorates at all levels should have the qualification to become the subject of civil public interest litigation for personal information protection, so as to better play the system advantage of the people's procuratorate. The grassroots people's procuratorate can better meet the needs of the people, take root at the grassroots level, understand the truth, and can also control the infringement range of the personal information infringer at the first time. The higher procuratorate can also rely on the system advantages of the people's procuratorate to lead the lower people's procuratorate to deal with the case as necessary, and coordinate the mobilization of resources according to the priority of the case. By dividing the priority of the case, the people's procuratorates at different levels can bear cases of different difficulties, that is, the cases with greater social impact in a certain area should be directly intervened by the people's procuratorates at the same level or even at a higher level to use strong national public power to control the infringement at the first time.

5.3 THE PEOPLE'S PROCURATORATE SHOULD FORMULATE A PROPER GRADING SYSTEM FOR CIVIL PUBLIC INTEREST LITIGATION ON PERSONAL INFORMATION PROTECTION.

When the grass-roots people's procuratorate takes over the case, it is found that the scope of the case has reached the whole country, and the infringers are scattered in many provinces. Comprehensively evaluating the nature and social impact of the case, we can report it to the Supreme People's Procuratorate, synthesize multi-party information, judge which organ is the qualified subject, and finally determine and integrate the power. Correspondingly, if the scope of infringement only reaches the provincial level, it can be reported to the provincial high-level inspection; at the municipal level, the municipal inspection can only be carried out locally, and the local grassroots people's procuratorates can assume this function. In this way, the division of labor is orderly and the power is coordinated, which can more efficiently and effectively protect the legitimate rights and interests of the parties. However, the people's procuratorate should further strive for rigor in the participation of specific cases. The filing of civil public interest litigation should be modest [5]. The Supreme People's Procuratorate stipulates that the civil public interest litigation must go through the pre-

litigation procedure, the social public interest is still in a state of infringement. The requirement for the defendant is citizens, legal persons or other organizations that are accused of committing acts that damage the public interest of the society. The following requirements should also be met: "The national interest or social public interest has been seriously infringed or there is a significant risk of infringement, and the people have strong reactions"; The infringement violates mandatory legal provisions and has obvious illegality; The current administrative law enforcement system and mechanism are seriously malfunctioning or have obvious defects, making it difficult to effectively solve the problem of infringing on public interests. There are no other eligible subjects to file lawsuits, and it is difficult to effectively protect public welfare through ordinary civil, administrative, and criminal litigation. And clearly put forward through private interest litigation can effectively solve the right relief, should not be filed. It can be seen that the Supreme People's Procuratorate has maintained a consistent cautious attitude towards the expansion of public interest litigation. It is clear that the boundary of the people's procuratorate's participation in the public interest litigation of personal information is the saving of social public welfare forces, so that the legitimate rights and interests of the right holders can be more fully relieved.

5.4 COMPLEX CASES CAN TRY TO BUILD A COMPOSITE SUBJECT.

The people's procuratorial organs are professional in law, social organizations are professional in network information technology, and consumer protection organizations are professional in the protection of consumer rights and interests. In the face of the gradual imbalance of information rights in the network era and the unknown information risk in the era of artificial intelligence, a single organ will fall into a relatively weak position in the face of the professional team of the corresponding professional platform, and should regulate the future from a forward-looking perspective. In other words, the ability of a single subject to protect personal information security has its own advantages and disadvantages. And their opponents, personal information infringers are often fully functional, clear functions, often in the infringement can be varied, so that personal information protection of civil public interest litigation is difficult to fight a single subject, to the protection of rights and interests to bring a lot of trouble. In other words, in order to effectively curb infringement, under special circumstances, it is difficult to achieve results by relying solely on a single subject. It is imperative to form a comprehensive personal information protection civil public interest litigation team. Since it is a team, it is necessary to distinguish the primary and secondary, otherwise the team's combat effectiveness is not as good as doing it alone. Some legal persons different from personal information infringers are interest communities and have a strict organizational structure. The main body of personal information protection

civil public interest litigation has no organizational relationship and belongs to the temporary team. Therefore, the temporary team should be systematically constructed. At least, it is necessary to distinguish the primary and secondary, perform their respective duties, and then give full play to their combat effectiveness. In general, the civil public interest litigation of personal information protection is a legal litigation. Therefore, the legal professional team should be used to complete the whole litigation process in an overall, powerful and orderly manner. Therefore, it is necessary to take the people's procuratorate as the main body and use the national public power as the endorsement, which can deter the personal information infringer. Secondly, the organization identified by the national network and information organs can be mainly responsible for technical issues and act as the most powerful technical blade, which can not only make up for the shortcomings of the weak technical ability of the procuratorial organs, but also be keenly aware of the technical means of personal information infringement. In extremely special and complex cases, try to build a personal information protection public interest litigation team based on the people's procuratorate, supplemented by social organizations and consumer protection organizations to protect the personal information rights and interests under the threat of unbalanced Internet hegemony.

6. CONCLUSION

At present, compared with the actual imbalance of rights of individuals on the platform, the use of personal information is often in a weak position. The core purpose of personal information protection public interest litigation is to balance the comprehensive strength between the infringing party and the injured party and protect personal information. In terms of the subject, according to the actual needs of the case, we should give full play to the advantages of various subjects, do our best and show their strengths. If necessary, according to the complexity of the case, a professional and clear division of labor should be formed. In practice, all procedures should be designed closely around balance, and more attention should be paid to the actual effect and warning effect in terms of protection measures, so as to truly make the personal information protection system become the institutional guarantee for protecting the rights and interests of personal information in the era of big data.

ACKNOWLEDGMENTS

The authors thank the editor and anonymous reviewers for their helpful comments and valuable suggestions.

FUNDING

Not applicable.

INSTITUTIONAL REVIEW BOARD STATEMENT

Not applicable.

INFORMED CONSENT STATEMENT

Not applicable.

DATA AVAILABILITY STATEMENT

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

CONFLICT OF INTEREST

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

PUBLISHER'S NOTE

All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers. Any product that may be evaluated in this article, or claim that may be made by its manufacturer, is not guaranteed or endorsed by the publisher.

AUTHOR CONTRIBUTIONS

Not applicable.

ABOUT THE AUTHORS

LIU, Liyuan

Liu Liyuan, male, Han nationality, Shangqiu, Henan, Xinjiang Normal University School of Political Science and Law graduate student, civil and commercial law direction.

law basis. *Politics and Law*, (4), 131–140, 117.

- [4] Li, H. (2020). The evolution of the plaintiff subject in civil public interest litigation. *Jianghai Academic Journal*, (1), 1–9.
- [5] Zhang, C. G. (2021). The procedural logic and normative interpretation of civil public interest litigation on personal information protection. *Journal of the National Prosecutors College*, (6).

REFERENCES

- [1] Li, Z. (Ed.). (2007). *Law and economics*. University of Electronic Science and Technology Press. p. 285.
- [2] Zhang, W. D., & Hu, X. (2020). The construction of administrative public interest litigation system for personal information in the big data era. *Journal of Northwest University (Philosophy and Social Sciences Edition)*, (4), 69–80.
- [3] Yao, J. (2019). Re-understanding of Chinese consumer law theory: Focusing on consumer movement and private