



# Study on The Scope of Administrative Public Interest Litigation Cases

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**Abstract.** Procuratorial organs, which have the dual role positioning attributes of public interest representatives and national legal supervision organs, play a crucial role in national and social governance, Under the current background of preventing and resolving major risks and promoting the modernization of national governance system and governance capacity, we should actively and steadily expand the space of "equal" public interest litigation based on the judicial practice experience of the past five years. Pay attention to answer questions "new problem", public interest litigation scope expanding gradually to the professional technical stronger, influence is wider, national sustainable development core interests and major social and public interests, but the absence of force, social organization regulation is easy to "disorder", the government "failure" the essential field of higher risk, do a good job in the new era from the deep level, macro Angle public interest litigation in procuratorial work, We will provide better public interest litigation and procuratorial products to the people.

**Keywords:** Administrative public interest litigation, Scope of case

## 1 INTRODUCTION

At present, with the rapid development of market economy, social structure is gradually diversified, social relations are becoming more complex, and all kinds of interest disputes and contradictions are increasingly prominent. Under this background, environmental problems become increasingly prominent, and the state begins to pay attention to environmental protection and a series of key areas related to the people's livelihood. Administrative organs, as the exercising institutions of public power, have the responsibility of supervision over resources and environment and play the role of safeguarding public interests. When the administrative organ does not fulfill the supervision responsibility, it will also damage the public interest. In 2015, the administrative public interest litigation system was piloted in some Chinese cities. In 2017, the administrative public interest litigation system was formally written into the Administrative Procedure Law. The system become the social and public interests, to prevent the abuse of public power, and the scope of accepting cases is the key problem, at present our country is formed by public interest litigation case scope including the ecological environment and resources protection, food and drug safety, protection

of state-owned property, transfer of state-owned land access and reputation of the protection of "4 + 1" pattern.

However, with the further development of administrative public interest litigation system, the scope of administrative public interest litigation confined to this pattern has shown its limitations, which need to be expanded and breakthrough. However, the lack of order in the exploration of "extra-equal" cases, there are still many fields that have not entered the scope of accepting cases of administrative public interest litigation, and it is extremely urgent to protect the public interest.

## **2 THE BASCI THEORY OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION CASE SCOPE**

### **2.1 The Meaning and Characteristics of The Scope of Administrative Public Interest Litigation Cases**

The scope of administrative public interest litigation cases mainly refers to the public interests of administrative subjects to perform their duties in violation of the law or negligent in performing their duties, which can be prosecuted by the procuratorial organs to the judicial organs. That is, which cases the procuratorial organs can file administrative public interest litigation, which cases the trial organs can accept and examine. Among the characteristics of the scope of administrative public interest litigation cases, first of all, the statutory scope is the basis for determining the scope of the case, similar to the principle of "statutory punishment for a crime" in the criminal law. Only within the scope expressly stipulated by the law, the procuratorial organ can prosecute and the judicial organ can examine<sup>[1]</sup>. Secondly, the purpose is for the public interest. It can be seen from the four main areas involved that these four areas are related to the national economy and the people's livelihood, and are areas of great influence and high popularity. The scope of the case is mainly reflected in the lack of a specific object of infringement listed in the articles, but the content involves the public interest of the unspecified majority, which is obviously different from the traditional administrative litigation. Finally, the scope of administrative public interest litigation cases is not unlimited, there is a certain limitation, not as long as the illegal administrative acts that damage the public interest are included in the scope of cases. In the process of the development of the administrative public interest litigation system, we can not arbitrarily expand the scope of cases on the grounds of safeguarding the public interest, but also aggravate the administrative law and make it arbitrarily damage the public interest. This requires a balance between the two. Therefore, we must consider the limitation of the scope of cases when conducting research.

### **2.2 Significance of Expanding the Scope of Administrative Public Interest Litigation Cases**

The effective protection of public interests requires the protection of the administrative public interest litigation system. Although this system has not been established

for a long time, the scope of administrative public interest litigation is an important focus of discussion from all walks of life, whether in the discussion stage before the amendment of the new law or in the practice and application stage after the implementation of the new law. Scientific and reasonable expansion of the scope of administrative public interest litigation cases in the maintenance of public interests, the protection of citizens' rights and interests and the restriction of administrative power are of great significance. Clarifying the scope of administrative public interest litigation cases not only promotes the protection of public interests, but also brings some benefits in the field of environmental resources, food and medicine, state-owned land and other areas of public interest damage. These problems are more obvious with social development contradictions. The scope of administrative public interest litigation cases should be reasonably expanded to prevent the occurrence of such illegal phenomena that damage public interests, and the strength of judicial supervision should be clarified to safeguard public interests in a more timely and effective manner. The scope of administrative public interest litigation cases strengthens the judicial supervision power of judicial organs and forces administrative organs to assume corresponding responsibilities. This is conducive to safeguarding damaged public interests and protecting citizens' rights and interests, which are the concrete embodiment of collective human rights in these important areas involving public interests [2]. The scope of the case can reflect the scope of administrative supervision and the degree of public interest protection, which are the embodiment of the protection of citizens' rights and interests in the judiciary.

The determination of the scope of administrative public interest litigation is also conducive to restricting administrative power and promoting administration according to law. Executive public power is like "a wild horse" difficult to control. If anyone uses improperly, will cause "runaway" risk, is not conducive to social development, this is a permanent law [3]. As the owner of public power, if the administrative organ does not control the use of administrative power, it will inevitably lead to the abuse of power, thus infringing on civil rights and public interests. "Power should not be capricious", which means that administrative organs should not allow their "temper" when exercising their power, and it is necessary to take measures to limit it. To restrict public power is the previous means of restricting administrative power, that is, to correct the illegal exercise of a public power by another public power. Therefore, it is not a good way to solve administrative acts that damage public interests by administrative organs through internal supervision of the public power system. However, the expansion of public power breaks the supervision relationship between them and makes this supervision relationship become an empty shell. Therefore, it is far from enough to rely only on the internal supervision and restriction of the administrative system, and the "prescription" to solve this outstanding problem is to use the administrative public interest litigation system. It restricts the administrative power in the form of the reasonable supervision of judicial power to the administrative power, so that it can be exercised in a legitimate and reasonable direction, so as to solve the problem of the expansion of administrative power and promote the administration by law.

### **3 EXISTING PROBLEMS IN THE SCOPE OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION**

#### **3.1 Vague Definition of Public Interest**

The scope of cases and public interests are in the same lineage and mutually prerequisite. Protecting damaged public interests is the fundamental purpose of administrative public interest litigation system. However, the public interest has always lacked a clear and specific provision, so there is still no conclusion in the theoretical circle. At present, studies on public interest show that public interest can only be roughly judged, but cannot be accurately defined. Such ambiguity restricts the development of the scope of cases<sup>[4]</sup>. Generally speaking, the best state of the development of the scope of cases is consistent with the scope of public interests, and the scope of cases is constantly extended and refined with the development of public interests. But vague public interest has disadvantages, the procuratorial organs can not better safeguard its existence. If the arbitrary interpretation of public interests will lead to the uncertainty of the scope of the case, it not only violates the law of justice but also goes against the protection of public interests, which is tantamount to putting out a fire with firewood. Therefore, it is necessary to clarify the public interest in the future.

#### **3.2 Too Few Specific Legal Provisions**

The administrative public interest litigation system is stipulated in the fourth paragraph of article 25 of the Administrative Procedure Law. Generally speaking, the establishment of a system needs a lot of theoretical research and legal provisions as the support. As a new system, although it has been tested by a large number of pilot work before its establishment, things are constantly developing, and the new system also needs to move forward. In the process of development, it is inevitable to encounter various problems. At this time, it is difficult to cope with all kinds of problems by relying on only one clause. In terms of the scope of cases, article 25, Paragraph 4, lists four areas and uses the word "etc." as the bottom. This short sentence has exposed many problems. At present, the word "etc" has not been clarified and understood through legislation or judicial form. In the expansion of the scope of the case, as to which areas can be extended and which areas can not be extended, there is no clear provision. Therefore, there are too many gaps in the existing provisions and the weak legal basis is not conducive to the development of the scope of cases, so it is necessary to improve it.

#### **3.3 The Word "Etc" Has Not Fully Played Its Role**

The legal characteristics of the case scope of administrative public interest litigation determine that the threshold of admittance must be the explicit provisions of law. Whether the scope of the case has a direct impact on whether the administrative pub-

lic interest litigation system can really play its role, and also determines the degree of public interest protection. Through sorting out the legislative and judicial status quo of the scope of administrative public interest litigation cases in China, we can see that the scope of cases is relatively narrow during the pilot period, as well as the amendment of the new law in 2017 and the subsequent announcement of relevant interpretations [5]. The new law lists four areas of the scope of the case, and the word "etc" is the bottom, although the current interpretation of the word "etc" by "etc" has become the consensus of the theoretical and practical circles. However, for the matters not clearly stipulated by law, judicial organs are often cautious in judicial practice [6]. In addition, the public interests of the state and society are related to the national economy and people's livelihood and involve various fields. With the transformation of society, public interests are also developing continuously and showing a diversified feature. Besides the areas prescribed by law, there are serious damages to public interests in other fields [7]. If the public interests in these areas are not protected, they will not meet the needs of the people, nor will they be able to make the people feel the authority, fairness and justice of the law. Therefore, the protection of public interests cannot be limited to the situations listed in the articles. After all, in the course of reform, problems should be viewed from the perspective of development.

At present, the exploration of the character "etc" is still in the "infancy" stage, and the expansion of the field of "etc" is only a part, which is still the tip of the iceberg relative to the huge public interest system. The current provisions of the scope of cases cannot meet the urgent needs of the public for the protection of public interests, and the word "etc" should continue to play a role. To expand the field beyond "etc" is not only to echo the call of maintaining public welfare, but also to promote the practical needs of administrative public interest litigation [8].

## **4 SUGGESTIONS ON THE SCOPE OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION CASES**

### **4.1 Improve Relevant Judicial Interpretations**

Compared with legislative amendments, it is very convenient and effective to solve current problems through judicial interpretation." Two high" can start from the legislative purpose to make scientific judicial interpretation, maximum restoration of legislative intention. In practice, because legislators hold a conservative and cautious attitude towards the provisions of the scope of cases, the scope of cases is too narrow, and the procuratorial organs can not protect the public interests to the maximum extent, and can not really play a role. Moreover, the concise legal provisions lead to legislative gaps in the scope of cases, and the procuratorial organs are cautious in exploring. But prosecutors remain optimistic about expanding the scope of the case, given the state's backing. For example, the Supreme Public Prosecutor's office said that public interest lawsuits can be filed against kindergartens for educational facilities and food safety. This forms a breakthrough to the category beyond the four fields

stipulated <sup>[9]</sup>. From the local level, the local procuratorial organs are also making efforts to explore. For example, regarding the damage of ancient Bridges, the procuratorial organ of Tongzhou District in Beijing suggested to the local functional departments before issuing the complaint and urged them to perform their duties, which has made a breakthrough in legal provisions <sup>[10]</sup>. These explorations are the expansion of procuratorial organs beyond the legal provisions.

#### **4.2 Appropriately Explore "Substandard" Areas and Appropriately Expand the Scope of Cases**

The scope of administrative public interest litigation should be broad because of the broad scope of administrative authority and procuratorial organ's legal supervision. However, any development should be moderate, the scope of administrative public interest litigation is not infinite extension. Administrative public interest litigation is a system of restriction and restriction for administrative organs to exercise administrative powers. If the scope of administrative public interest litigation includes all illegal acts that damage the public interests of the state and society, it may have a great impact on administrative efficiency and even cause paralysis of administrative organs' governance system. Administrative agencies should pay attention to both quality and efficiency in law enforcement.

In addition, the procuratorial organ's legal supervision should also serve the overall situation of development and stability, and should not deviate from the national development track. If the scope of "etc" is extended unlimitedly, the tension and confrontation between procuratorial organs and administrative organs will be intensified, which will have adverse effects and hinder the healthy development of the rule of law <sup>[11]</sup>. Therefore, the expansion of other fields should be reasonable and orderly, conform to the trend of social development and combine with the reality of social development. The procuratorial organs should also keep up with the development of governing the country by law, improve the sensitivity of supervision, and actively explore the "etc" field which is in line with the purpose of protecting public interests. Therefore, the expansion of other fields should be reasonable and orderly, conform to the trend of social development and combine with the reality of social development. The procuratorial organs should also keep up with the development of governing the country by law, improve the sensitivity of supervision, and actively explore the "etc" field which is in line with the purpose of protecting public interests.

## **5 CONCLUSION**

Administrative public interest litigation is the last line of defense to protect public interests from infringement, and it is a necessary external supervision means when the abuse and omission of administrative power cause damage to social public interests. The law entrusts the procuratorial organ to supervise the illegal and omission acts of the administrative organ by exercising the right of litigation, limit the public power, put the administrative supervision in the correct position, realize the goal of social

co-governance, and safeguard social fairness and justice. China's administrative public interest litigation system has experienced a continuous development process, from the pilot practice to the implementation of legislation, the scope of accepting cases has also changed a lot. Procuratorial organs should be within the scope of administrative public welfare lawsuit legal review and supervision actively, in the field of exploring "sub-standard", expanding the scope of the case, the cultural protection, safety production, etc can be significant benefits to society and people's influence and have made certain achievements in practice field gradually into the administrative public interest litigation cases.

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