

Justification of the Administrative Public Interest Litigation System for Personal Information Protection

YanJun Liu¹ & Jiali Su²

¹ Doctor of Jurisprudence, Master Supervisor of the Law School, Shanxi University of Finance and Economics, China

² Postgraduate of Law School, Shanxi University of Finance and Economics, China

Correspondence: Jiali Su, Postgraduate of Law School, Shanxi University of Finance and Economics, China.

Received: August 18, 2024

Accepted: September 5, 2024

Online Published: September 10, 2024

doi:10.5539/par.v13n2p29

URL: <http://dx.doi.org/10.5539/par.v13n2p29>

Abstract

There is controversy over whether the public interest litigation clause in Article 70 of the Personal Information Protection Law includes administrative public interest litigation. However, in practice, the administrative public interest litigation mechanism focused on personal information protection has already been explored in the practice of prosecutorial public interest litigation. From a theoretical perspective, administrative public interest litigation for personal information protection has its institutional value, reflected in preventive value, equitable value, and compensatory value. From a normative perspective, the administrative public interest litigation system can be connected with the elements of the Personal Information Protection Law in terms of subject qualifications, application areas, initiation, and procedures. Article 70 of the Personal Information Protection Law reserves institutional space for the operation of the administrative public interest litigation mechanism, which can include the administrative public interest litigation system. From a practical perspective, it is necessary to demonstrate the practical necessity of administrative public interest litigation for personal information protection by organizing existing practices. The advantages of administrative public interest litigation can be significantly utilized in prosecutorial public interest litigation involving personal information protection, which helps to achieve the public interest governance goals of personal information protection.

Keywords: personal information protection, administrative public interest litigation, administrative public interest litigation pre litigation procedure

1. Introduction

On June 15, 2021, the Central Committee of the Communist Party of China issued the "Opinions of the Central Committee of the Communist Party of China on Strengthening the Legal Supervision of Procuratorial Organs in the New Era" (hereinafter referred to as the "Opinions"). The Opinion points out that actively and steadily promoting the scope of public interest litigation cases, exploring the handling of public interest damage cases in key areas such as personal information protection, summarizing practical experience, and improving relevant legislation. In August of the same year, the Personal Information Protection Law of the People's Republic of China (hereinafter referred to as the Personal Information Protection Law) was passed, in which Article 70 stipulated the public interest litigation system in the field of personal information protection, clearly incorporating the public interest litigation system into the field of personal information protection. However, there is controversy in academia and practice over whether this provision includes both civil and administrative public interest litigation, especially whether administrative public interest litigation is applicable to personal information protection. ¹Some scholars believe that Article 70 of the Personal Information Protection Law only includes civil public interest litigation, and the administrative public interest litigation system is not applicable to the field of personal information protection. The main reasons are: firstly, Article 25 of the Administrative Litigation Law has strict restrictions on the situations of administrative public interest litigation, which does not specify the applicable situations in the field of personal information protection; Secondly, almost all administrative agencies have the responsibility of protecting personal information, and there is a situation of multiple supervision and blurred

¹ Jiang Hongzhen, (2022). Administrative Public Interest Litigation on Personal Information Protection. Journal of Shanghai Jiao Tong University (Philosophy and Social Science Edition), (30), 28.

boundaries. Administrative public interest litigation that stipulates personal information protection seems to be less feasible.² This article analyzes the above viewpoints, attempting to grasp the institutional value of administrative public interest litigation for personal information protection from a value perspective, analyze the feasibility of administrative public interest litigation for personal information protection from a normative perspective, study the specific application of administrative public interest litigation for personal information protection from a practical perspective, point out the irrationality of the above statement, and promote the administrative public interest litigation system for personal information protection to play its due institutional value and fully protect the public interests in the field of personal information.

2. The Institutional Value of Administrative Public Interest Litigation for Personal Information Protection

The value of protecting personal information in administrative public interest litigation is prominent. One is the value of prevention. In practice, administrative public interest litigation has preventive supervision value. Firstly, the procuratorial organs have strong initiative in supervising the performance of their duties. Article 25, Paragraph 4 of the Administrative Litigation Law stipulates that the source of administrative public interest litigation cases is "discovered in the performance of duties", endowing the procuratorial organs with the statutory authority to actively discover, investigate and collect evidence on public interest damage matters, and independently initiate procedures, making it demonstrate the value of preventive supervision. In practice, investigators are usually not limited to conventional legal supervision methods such as review, arrest, prosecution, and prosecution, and even actively discover, search, and excavate clues of public interest damage without being confined to public reporting, which is significantly different from passive acceptance and supervision of civil public interest litigation. The procuratorial organs can actively intervene, timely repair and protect public interests, and to a certain extent play a role in preventing the expansion of public welfare damage.

The second is to balance value. The pre litigation procedure of administrative public interest litigation can better balance the value conflict between personal information protection and development and utilization. In the era of big data, personal information not only involves personal and property rights, but also has public welfare value in circulation, development, and utilization. Excessive protection of personal information will limit its reasonable development and utilization. This is also confirmed by the relevant provisions on personal information in the Civil Code. Article 111 of the Civil Code only stipulates that the personal information of natural persons is protected, and does not explicitly state that natural persons have the right to personal information. In fact, it considers the balance between personal information protection and development and utilization, avoids the situation of personal abuse after the confirmation of personal information rights, and maintains the healthy development of the data industry. Therefore, in the era of big data, personal information protection methods should focus on balancing the dual value of personal information protection and development and utilization, and the unique institutional design of administrative public interest litigation meets this practical need. Pre litigation procedure is a statutory and necessary pre litigation procedure for the procuratorial organs before filing a lawsuit. Its purpose is to urge the administrative organs to perform their duties in accordance with the law and protect public interests through procuratorial suggestions, achieve self correction and self supervision of administrative power, and achieve the goal of protecting public interests with less resources and avoiding bad litigation. In addition, it also aims to supervise administrative agencies to perform their duties in accordance with the law and optimize social governance. Therefore, its intervention significance is not only in providing relief, but also in creating a good environment for the circulation, development, and utilization of personal information.

The third is the value of filling positions. Criminal and civil litigation are traditional ways of protecting personal information, both of which are difficult to fully adapt to the characteristics of rapid circulation and explosive leakage of massive personal information in the era of big data. Civil remedies have practical problems such as high cost of rights protection and low return rate, while criminal crackdowns have shortcomings such as high proof standards, delayed and one-sided remedies, making it difficult to comprehensively provide relief for public welfare.³ Currently, although the illegal use of personal information can be recognized as a corresponding crime in telecommunications, fraud, extortion, robbery and kidnapping, there are also many criminal incidental civil lawsuits or civil lawsuits in this field to seek private remedies for personal information, which have certain regulatory effects. However, it cannot be denied that in practice, there are only a few individuals who can be convicted of illegal use of personal information or file civil lawsuits. In cases where a large number of personal

² Cheng Xiao, (2021). *Understanding and Application of the Personal Information Protection Law*, China Legal Publishing House, 531.

³ See Yin Shaocheng and Wang Hai, (2022). *The Logical Generation and Institutional Construction of the Administrative Public Interest Litigation System for Personal Information Protection*, *Economic and Trade Law Review*, (6), 57.

information use activities do not constitute corresponding crimes or cause significant financial losses to individuals, they usually do not enter the regulatory line, such as using personal information for commercial activities such as training, enrollment, business promotion, and precise advertising without personal consent. In addition, for the regulation of administrative law, administrative agencies are both the subject of personal information protection and the subject of processing, especially under the construction of a "digital government", which will enable administrative agencies to have a large amount of personal information and become personal information processors and users, invisibly becoming potential personal information leakers. Overall, traditional protection methods focus on individual cases and are difficult to form a comprehensive and holistic social effect, and administrative agencies also find it difficult to become detached and neutral protectors. Therefore, the intervention of administrative public interest litigation based on the principle of final relief plays a good supplementary role.

3. Feasibility of Administrative Public Interest Litigation System for Personal Information Protection

If administrative public interest litigation is applicable to the field of personal information protection, then from a normative perspective, the strongest foundation may come from two ways. Firstly, the law does not establish clear prohibitive clauses. Secondly, there is no substantive legal conflict between the relevant norms in the field of personal information protection and the administrative public interest litigation system.

3.1 No Prohibitive Clauses

According to Article 70 of the Personal Information Protection Law, "If a personal information processor violates the provisions of this Law by processing personal information and infringes upon the rights and interests of numerous individuals, the People's Procuratorate, consumer organizations stipulated by law, and organizations determined by the national cyberspace information department may file a lawsuit with the People's Court in accordance with the law." From the perspective of textual interpretation, this provision stipulates two elements of the public interest litigation system for personal information protection. Firstly, a limited list of entities with the right to initiate public interest litigation for personal information protection is provided, which includes not only the People's Procuratorate and statutory consumer organizations, but also "determined organizations" by departments responsible for personal information protection. Prosecutorial public interest litigation itself includes both civil public interest litigation and administrative public interest litigation. The only entity currently filing administrative public interest litigation is the People's Procuratorate; The second is to clarify the two substantive requirements for prosecution. Firstly, personal information processors engage in illegal processing of personal information. The illegality here refers to violating the provisions of the Personal Information Protection Law. Secondly, such illegal processing of personal information must reach a level that has already infringed upon the rights and interests of numerous individuals. Based on the provisions of Article 58 of the Civil Procedure Law,⁴ it is in line with the institutional mechanism of civil public interest litigation that the relevant parties represent the interests of the majority to file a lawsuit against the "infringer". Therefore, Article 70 of the Personal Information Protection Law can indeed be seen as a typical example of setting up a special clause in domain law to regulate the application mechanism of civil public interest litigation in specific fields, after specialized laws such as the Consumer Rights Protection Law and the Environmental Protection Law. However, neither from the provisions of Article 70 nor from the legal provisions of the entire Personal Information Protection Law, there is a clear prohibition on the application of administrative public interest litigation. Therefore, there is room for interpretation as to whether Article 70 of the Personal Information Protection Law itself can serve as the basis for administrative public interest litigation, and it cannot be assumed that this article specifically refers to civil public interest litigation for personal information protection.

3.2 There Is No Substantive Legal Conflict

The question of whether there is a substantive legal conflict between "Personal Information Protection" and "Administrative Public Interest Litigation" requires an analysis of Article 25 (4) of the "Administrative Litigation Law" and sorting out its relationship with Article 70 of the "Personal Information Protection Law". As a core provision of the administrative public interest litigation system, Article 25, Paragraph 4 of the Administrative

⁴ Article 58 of the "Civil Procedure Law of the People's Republic of China" The organs and relevant organizations provided for by law may initiate litigation in the people's courts against conduct that harms the public interest, such as polluting the environment or infringing on the lawful rights and interests of many consumers. In the course of performing their duties, people's procuratorates may initiate litigation in the people's courts if they discover conduct that harms the public interest, such as damage to the ecological environment and resource protection, or infringement of the lawful rights and interests of many consumers in the field of food and drug safety, where there are no organs and organizations provided for in the preceding paragraph, or where the organs and organizations provided for in the preceding paragraph do not initiate litigation. Where the organs or organizations provided for in the preceding paragraph raise a lawsuit, the people's procuratorate may support the prosecution.

Litigation Law stipulates: "If the people's procuratorate discovers that an administrative organ with supervisory and management responsibilities in areas such as ecological environment and resource protection, food and drug safety, state-owned property protection, and state-owned land use rights has illegally exercised its powers or failed to act, resulting in infringement of national interests or social public interests, it shall make procuratorial suggestions to the administrative organ and urge it to perform its duties in accordance with the law. If the administrative organ fails to perform its duties in accordance with the law, the people's procuratorate shall file a lawsuit with the people's court in accordance with the law." The administrative public interest litigation system established based on this provision has the following characteristics: firstly, the exclusivity of the plaintiff. Only the People's Procuratorate can file an administrative public interest lawsuit. Secondly, the limited scope of the case. Although it is possible to expand the scope of application of administrative public interest litigation through external interpretations and other unilateral laws, Article 25 (4) of the Administrative Litigation Law provides a typological example of the scope of application through enumeration. Thirdly, the strictness of the defendant and the initiating elements. The administrative public interest litigation mechanism can only be initiated when the administrative organs responsible for supervision and management illegally exercise their powers or fail to act, resulting in infringement of national interests or social public interests. Fourthly, the necessity of pre-trial procedures. When the People's Procuratorate initiates a public interest lawsuit, it must go through the procuratorial suggestion procedure and the pre litigation procedure, and can only file a lawsuit with the People's Court if it is determined that the administrative organ has not fulfilled its duties in accordance with the law.

Article 70 of the Personal Information Protection Law establishes a mechanism for filing a public interest lawsuit against a personal information processor in a people's court, provided that the subject of the lawsuit meets the statutory requirements. The provisions of Article 25 (4) of the Administrative Litigation Law on administrative public interest litigation in terms of subjects, fields, elements, and procedures themselves are not explicitly excluded within the framework of Article 70 of the Personal Information Protection Law. Taking a step back, even if we acknowledge that Article 70 of the Personal Information Protection Law only establishes a civil public interest litigation protection mechanism for personal information protection, we cannot completely rule out the possibility of the application of administrative public interest litigation based on Article 25 (4) of the Administrative Litigation Law in the field of personal information protection. That is to say, there is no substantive legal conflict between Article 70 of the Personal Information Protection Law and Article 25 (4) of the Administrative Litigation Law, and there is even a possibility of inclusiveness.

In terms of subject qualifications, in Article 70 of the Personal Information Protection Law, it is confirmed that the only subject filing an administrative public interest lawsuit for personal information protection is the People's Procuratorate, and the eligible defendant is a personal information processor. From the relevant provisions of the Personal Information Protection Law, it is not difficult to see that personal information processors include any organization and individual, as well as state organs. Administrative entities are a special type of personal information processors. When an administrative entity, as a personal information processor, engages in illegal exercise of power or inaction that harms national or public interests, it triggers the application of Article 70 of the Personal Information Protection Law. In this situation, it will inevitably trigger the application of Article 25 (4) of the Administrative Litigation Law. However, civil public interest litigation for personal information protection cannot regulate this illegal situation and provide relief for damaged public interests. In the case where the administrative subject is the responsible party for illegal processing of personal information, Article 70 of the Personal Information Protection Law and Article 25 (4) of the Administrative Litigation Law have an inclusive relationship from the perspective of the responsible party. At this time, personal information protection public interest litigation includes administrative public interest litigation, but appropriate adjustments need to be made in combination with the Administrative Litigation Law in terms of procedural and substantive elements.

In terms of the scope of application, Article 25 (4) of the Administrative Litigation Law also retains the possibility of expanding the scope of application of administrative public interest litigation through the use of the word "etc.". Some scholars believe that the current scope of protection for public interest litigation in China is actually based on a "list+open" approach.⁵ Just like the Interpretation on Several Issues Concerning the Application of Law in Public Interest Litigation Cases, which includes the infringement of the names, portraits, reputations, and honors of heroes and martyrs in civil public interest litigation for prosecution. It can be seen that Article 58 of the Civil Procedure Law provides strong evidence that "etc." is not fully listed. Similarly, Article 25, Paragraph 4 of the Administrative Procedure Law also includes the word "etc.", using "causing infringement of national or public

⁵ Liu Zhi and Dong Yi, (2024). The dilemma and thinking of the legal protection of personal information in the era of digital economy, Journal of Dalian University, 45(01), 74-81.

interests" as a cover, providing a normative basis for procuratorial organs to initiate administrative public interest litigation beyond the scope of four types of cases: ecological environment and resource protection, food and drug safety, national property protection, and transfer of state-owned land use rights. ⁶From this, it can be seen that there is also a possibility of including the field of personal information protection in the application of Article 25 (4) of the Administrative Litigation Law.

In terms of initiation and procedural requirements, if the procuratorial organs file a civil public interest lawsuit in accordance with Article 70 of the Personal Information Protection Law, they need to connect with the provisions of the Civil Procedure Law, and can only file a lawsuit if there is no eligible subject or if the eligible subject does not file a lawsuit, which has a complementary nature; Similarly, when the procuratorial organs file administrative public interest litigation, they also need to connect with the procedural provisions in the Administrative Litigation Law. On the one hand, prosecutorial advice is a necessary procedure, which not only has a certain objective deterrent effect on administrative agencies due to the support of judicial litigation, but also helps to save judicial costs by resolving some administrative public interest litigation cases through pre litigation procedures. On the other hand, judicial litigation for administrative public welfare can only be initiated if it is still determined that the administrative organ has "not fulfilled its duties in accordance with the law" after the procuratorial recommendation is issued. From this perspective, whether it is a civil public interest lawsuit or an administrative public interest lawsuit, the People's Procuratorate needs to add certain procedural requirements in accordance with Article 70 of the Personal Information Protection Law when filing a lawsuit.

4. The Necessity of Administrative Public Interest Litigation System for Personal Information Protection

In the era of rapid development of big data technology, better quality requirements have been put forward for personal information protection. The traditional personal information protection model in our country adopts a dual protection path of "private interest relief+public law protection", presenting a situation of weak private interest relief and insufficient public law protection. This also reflects that the traditional protection method focuses on individual cases and is difficult to form a global and holistic social effect, and it is difficult to achieve comprehensive protection of personal information. The reasons for this are the scale of personal information infringement, the low cost of violating personal information, the inadequate performance of regulatory responsibilities by relevant functional departments, the difficulty for individuals to seek judicial relief, and the low willingness to seek relief. In order to achieve effective protection of personal information, various sectors have called for strengthening the protection of personal information through public interest litigation. The judicial practice of public interest litigation for personal information protection had already been explored before the promulgation of the Personal Information Protection Law. The Supreme People's Procuratorate released 11 typical cases of public interest litigation for personal information protection in procuratorial organs on April 22, 2021, including 6 administrative public interest litigation cases for personal information protection. Therefore, when there is no clear regulation on the protection of personal information in prosecutorial public interest litigation at the normative level, there are already practical cases of administrative public interest litigation for personal information protection in judicial practice. After the promulgation of the Personal Information Protection Law, the procuratorial public interest litigation system for personal information protection was established at the normative level. The Supreme People's Procuratorate released the 35th batch of guiding cases on March 7, 2022, with a total of 5 cases, including 4 cases involving administrative public interest litigation for personal information protection; On March 30, 2023, the Supreme People's Procuratorate released a batch of 8 typical cases of public interest litigation for personal information protection, including 4 cases involving administrative public interest litigation for personal information protection. As of April 26, 2024, a total of 24 cases related to personal information protection public interest litigation were retrieved from the legal information database using "personal information protection public interest litigation" as the search object.⁷ After removing irrelevant cases, there were a total of 18 cases directly related to personal information protection administrative public interest litigation. It can be seen that in personal information protection public interest litigation cases, administrative public interest litigation cases for personal information protection account for the majority.

The cases of personal information protection administrative public interest litigation retrieved by the author have all stopped at the prosecutorial suggestion stage of the pre litigation procedure of personal information protection administrative public interest litigation and have not entered the litigation process. In the retrieved cases of administrative public interest litigation for personal information protection, behaviors involving personal

⁶ See Wang Chunyan and Wang Juan, (2019). Interpretation of the Scope of Administrative Public Interest Litigation, Zhejiang Academic Journal, (6), 97-103.

⁷ See the Faxin website: <https://www.faxin.cn>, the last visit was on April 26, 2024.

information leakage and infringement of personal information have appeared in various industries, including the medical industry, education and training industry, sports service industry, express delivery industry, and decoration industry. At the same time, relevant government administrative departments also have situations where personal information is leaked when disclosing government information. Therefore, the objects of the procuratorial organ's pre litigation procuratorial recommendations involve government departments and organs such as the Housing and Construction Bureau, the Public Security Bureau, the Internet Information Office, the Communications Administration, the Market Supervision Administration, the Post Office, and the Agricultural Bureau. In addition, some cases combine the paths of civil public interest litigation, administrative public interest litigation, and criminal incidental civil public interest litigation to protect the personal information rights and interests of a certain group. From the above cases, it can be seen that personal information rights have been infringed on a large scale and have reached the level of damaging social public welfare. These cases are only the tip of the iceberg and are a microcosm of a large number of personal information disputes in practice. However, it is evident that in judicial practice, administrative public interest litigation is urgently needed as a remedy to regulate administrative agencies responsible for personal information protection, supervision, and as personal information processors.

5. Conclusion

Personal information has become a core resource for social governance and economic operation. When government management departments become collectors and users of personal information due to public needs, there is a greater need for legal compliance and accountability.⁸ Judicial practice has shown that there is sufficient practical demand and application space for administrative public interest litigation for personal information protection in China. However, there is no conflict between Article 70 of the Personal Information Protection Law and Article 25 (4) of the Administrative Litigation Law in terms of provisions. Therefore, Article 70 of the Personal Information Protection Law can be used as the legal basis for administrative public interest litigation for personal information protection, highlighting the legislative spirit of protecting personal information rights and interests. In the future, combining with the existing system practice of public interest litigation in the field of personal information protection, and from the perspective of interpretive theory, bridging the normative application between Article 70 of the Personal Information Protection Law and Article 25 (4) of the Administrative Procedure Law, exploring multiple paths of administrative public interest litigation, civil public interest litigation, and criminal incidental civil public interest litigation to respond to the complexity of protecting personal interests, national interests, and social public interests will become an urgent issue that modern personal information protection needs to face directly.

References

- Cheng, X. (2021). *Understanding and Application of the Personal Information Protection Law*. China Legal Publishing House, 531.
- Jiang, H. Z. (2022). Administrative Public Interest Litigation on Personal Information Protection. *Journal of Shanghai Jiao Tong University* (Philosophy and Social Science Edition), (30), 28.
- Liu, Z., & Dong, Y. (2024). The dilemma and thinking of the legal protection of personal information in the era of digital economy. *Journal of Dalian University*, 45(01), 74-81.
- Wang, C. Y., & Wang, J. (2019). Interpretation of the Scope of Administrative Public Interest Litigation. *Zhejiang Academic Journal*, (6), 97-103.
- Yin, S. C., & Wang, H. (2022). The Logical Generation and Institutional Construction of the Administrative Public Interest Litigation System for Personal Information Protection. *Economic and Trade Law Review*, (6), 57.

Acknowledgments

Not applicable.

Authors contributions

Not applicable.

Funding

This article is a preliminary achievement of the 2022 Humanities and Social Science Youth Fund project of the

⁸ Fan Zhibin, Li Ning, Path Optimization of Personal Information Administrative Law Protection in the Era of Big Data[J], Journal of Hebei Open University, 2023, 28(06): 53-56

Ministry of Education of China, titled "Research on the Dilemma and Improvement Path of Gene Information Protection in the Context of Digital China" (Project No. 22YJC820021).

Competing interests

Not applicable.

Informed consent

Obtained.

Ethics approval

The Publication Ethics Committee of the Canadian Center of Science and Education.

The journal's policies adhere to the Core Practices established by the Committee on Publication Ethics (COPE).

Provenance and peer review

Not commissioned; externally double-blind peer reviewed.

Data availability statement

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

Data sharing statement

No additional data are available.

Open access

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.