

Участие прокуратуры Китая в судебном процессе в общественных интересах по защите личной информации (часть II)¹

Chinese Procuratorial Public Interest Litigation on Personal Information Protection (Part II)

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Аннотация. Закон о защите личной информации Китайской Народной Республики был официально введен в действие 1 ноября 2021 г. Появление этого Закона связано с воплощением идеи развития, ориентированного на людей, и представляет собой китайский опыт решения проблем защиты личной информации, с которыми сталкивается международное сообщество. Эта статья посвящена развитию китайского Закона о персональных данных, объясняет законодательную цель принятия данного Закона, а также выделяет семь основных его моментов и дает две важные характеристики. Кроме того, в статье делается акцент на ведение судебных разбирательств в общественных интересах китайской прокуратуры по защите личной информации, указываются недостатки этой системы с целью ее максимального совершенствования и развития.

Ключевые слова: защита персональной информации; судебный процесс в интересах прокуратуры; обработка персональной информации.

Abstract. The Personal Information Protection Law of the People's Republic of China (hereinafter referred to as Personal Information Law) has been officially implemented on November 1, 2021. The birth of this law embodies the idea of people-centered development and provides Chinese experience and solutions for the personal information protection problems faced by international society. This article focuses on the development of Chinese personal information law and explains the legislative purpose of Personal Information Law to further show seven highlights and two characteristics of it. Also, it puts emphasis on introducing Chinese procuratorial public interest litigation on personal information protection and points out the shortcomings of this existing system with a view to perfecting and developing the system value maximally.

Keywords: Personal Information Protection; Procuratorial Public Interest Litigation; Personal Information Processing.

¹ Часть I см.: Юридическая наука в Китае и России 5/22. Ежегодник. 2022. С. 25—36.

3. Chinese procuratorial public interest litigation on personal information protection

3.1. The development of Chinese procuratorial public interest litigation

The premise of the public interest litigation system is to protect the public interest. Therefore, the understanding of the public interest litigation system should be based on the understanding of the concept of public interest. Public interest is an important part of the daily language of law, and it is clearly reflected in the laws and regulations of many countries. But despite this, the connotation of public interest has not yet formed a unified standard in academia. American scholar John Rawls advocates the indivisibility and publicity of public interest, and believes that public interest must be provided through a political process, and all citizens should accept the same amount of this.² The American jurist Pound advocated dividing interests into three categories, namely: public interest, social interest and personal interest. Simply put, in Pound's concept, public interest is actually equivalent to national interest, and social interest is the interest that is closely related to social life and personal life.³

From this point, we can see that Pound's concept of public interest actually does not conform to the common perception of our Chinese scholars. There is no distinction between «social public interest» and «public interest» in the formulation of Chinese law. The latter is just a simple term for the former. Some scholars in China believe that public interest refers to the public interest of all members of society. If we accept that the starting point of the law is to protect the public interest, then it is to protect the personal interest of every citizen.⁴ This view violates the general consensus of the Chinese academic circles on the connotation of public interest, so it is worthy of further discussion. In fact, public interest involves the interest of an unspecified majority in society, neither the interest of all members of the society, nor the interest of a specific majority. This view has been recognized by most scholars in the Chinese legal field.

Public interest litigation is a lawsuit filed to protect national interests and social public interest. It is divided into civil public interest litigation and administrative public interest litigation. While the procuratorial public interest litigation is a public interest litigation initiated by the procuratorial organ. Looking back, as early as the ancient Roman period, the germination of the public interest

litigation system had already appeared. However, because the application of the system was not perfect at the time, it did not continue. The public interest litigation system with modern significance was born in the United States in the 1960s and 1970s, and its main areas were environmental protection and gradually expanded. In this process, the public interest litigation system further spread to other countries and regions in the world, setting off a worldwide trend of judicial reform. The theoretical basis of public interest litigation mainly comes from the concepts of objective litigation and subjective litigation created by the French jurist Leon Duguit. This group of concepts has been widely used in the research process of procedural law in civil law countries, and has laid a solid theoretical foundation for the public interest litigation system in civil law countries. Objective litigation and subjective litigation are a set of relative concepts, but there are still many differences between these two concepts.

First of all, from the perspective of value goals, the establishment of subjective litigation is to solve the problem of individual rights; while objective litigation exists for the purpose of safeguarding public interests and social order. Secondly, subjective litigation requires that the plaintiff must have an interest in the subject of the litigation, and the final litigation judgment is only legally effective for the litigants; while the objective litigation is just the opposite, which does not require the plaintiff to have a certain interest in the subject of the litigation. At the same time, the legal effect of objective litigation judgments may not only extend to litigants, but also include other people related to the public interest. As long as we clarify the difference between objective litigation and subjective litigation, we can find that traditional civil and administrative litigation are basically subjective litigation, while procuratorial public interest litigation belongs to the category of objective litigation. Compared with traditional litigation, procuratorial public interest litigation is based on safeguarding the public interest as the starting point and end point. And also because the procuratorate is the public authority of the country, it should also follow the principle of statutory authority in the process of initiating public interest litigation by the procuratorate.

In China, public interest litigation remains a relatively young legal system. In 2012, in the process of revising *Civil Procedure Law*, China established a public interest litigation system for the first time. Then in 2014, the procuratorial public interest litigation system also took shape. The idea of exploring the establishment of a public interest litigation system

² See: *John Rawls. Justice* [M]. Translated by He Huaihong, He Baogang, Liao Shenbai. Beijing, China Social Sciences Press, 1997. P. 257.

³ See: *Roscoe Pound. Jurisprudence* [M]. Translated by Liao Deyu. Beijing, legal press. 2008. P. 18.

⁴ See: *Wang-Liming. Chinese Civil Code Scholars' Suggestions and Legislative Reasons* [M]. Beijing, legal press. 2005. P. 19.

by the people's procuratorate was firstly proposed on The Fourth Plenary Session of the Eighteenth Central Committee of the Party. Subsequently, Chinese law officially gave the people's procuratorate the function and power to file public interest litigation in June 2017.

The reason why legislators have to specialize the prosecution function of public interest litigation on the basis of the existing public interest litigation system is as follows. First of all, the establishment of a public interest litigation system initiated by procuratorate is of great significance for expanding the scope of procuratorial supervision, improving the pattern of procuratorial supervision, and promoting the innovative development of the socialist procuratorial system with Chinese characteristics. The role of the procuratorate in China is the state's legal supervision agency. In 2017, the civil procedure law and the administrative procedure law were revised again, which expanded the scope of supervision of procuratorial organs, and was a milestone for procuratorate. It is another major reform of the socialist judicial system and litigation system with Chinese characteristics, which has profoundly changed the traditional pattern of litigation supervision by procuratorate. In addition, the establishment of a public interest litigation system initiated by procuratorial organs is of great significance for further improving the judicial protection mechanism of national interests and social public interests. For a long time, Chinese public welfare maintenance system has been relatively weak. Because some litigants lack the motivation and ability to initiate civil public interest litigation, and administrative organs' illegal exercise of their powers or omissions cause damage to the national interest and public interest, and there is a lack of competent administrative public interest litigation subjects, a large number of national and social public interests are affected. In that case, There are lots of infringements cannot be corrected in time in the society. If such illegal activities are ignored and allowed to develop, on the one hand, it is impossible to fundamentally reverse the administrative chaos in some localities and departments, and on the other hand, it may turn some emerging problems into criminal offenses. Therefore, the establishment of a public interest litigation system initiated by procuratorate complements the shortcomings of the current public interest maintenance system and can protect national interests and social public interests to the greatest extent.⁵

Importantly, only Chinese people's procuratorate can initiate administrative public interest litigation in the world. Major countries in the western world, such as France, Germany, Japan, the United States,

the United Kingdom, etc., have more or less stipulated in their national laws for procuratorates' initiation or participation in civil public interest litigation, but as for administrative public interest litigation, most countries do not have corresponding laws and regulations. Even if some countries have similar provisions in their legislation, it is not the real sense of the procuratorate to initiate administrative public interest litigation. Taking Germany and the United Kingdom as examples, German procuratorates only have the right to participate in administrative public interest litigation, but they do not have the power to initiate an administrative public interest litigation. In other words, in administrative public interest litigation, the procuratorates can participate in the process of applying the law, but it definitely cannot file the lawsuit as the plaintiff. While in the United Kingdom, it is stipulated that the attorney general can apply for judicial review involving public welfare for citizens in his own name, that is, to authorize citizens to file administrative lawsuits in the name of the attorney general. But in practice, once the attorney general has applied for relevant judicial review for citizens, he will no longer pay attention to the damaged public interest, and he will rarely initiate public interest litigation in his own name.

The main culprit for the above phenomena is that the countries of the civil law system and the common law system have completely different ways of positioning the procuratorates' functions from the ones China has. The procuratorates in the countries with over two major legal systems belong to the order of administrations and do not have the power of supervision over other administrations, simply playing their role as litigation organs. However, in China, *the Constitution* gives the people's procuratorates the legal supervision function. As a representative of the public interest, they can act as a fair third party in the event of a situation in which the administrative agency's failure to perform its duties causes damage to the public interest, urging administrations to actively perform their duties.

In fact, before the procuratorial public interest litigation system was implemented in China, it was the agencies and relevant organizations prescribed by law who had the right to initiate public interest litigation. Notwithstanding, the above-mentioned agencies and organizations often appear to be absent in practice, causing the damaged public interest to appear unprotected. The reason behind this may be that the above eligible subject takes their own interests into accounts or lacks litigation ability by virtues of unfamiliarity with the law. By contrast, the people's procuratorate is usually in a neutral position and generally does not involve the case and its own interests. What's more,

⁵ See: *People's Procuratorate of Dongsheng District, Ordos*. The Significance of Establishing a Public Interest Litigation System by the Procuratorate // URL: http://www.ordosds.jcy.gov.cn/gyss/201802/t20180227_2153025.shtml (accessed: December 2, 2021).

the procuratorate is legally professional and has the ability to initiate litigation procedures efficiently and accurately, so that it can give full play to the legal supervision function and promote administration by law and strict enforcement. Therefore, China formally introduced a public interest litigation system for procuratorates since then, and pioneered the world's first legal system for procuratorates to initiate administrative public interest litigation. In summary, the establishment of a public interest litigation system initiated by procuratorate plays an important role in further improving the administrative power restriction and supervision system.

The establishment of a public interest litigation system initiated by procuratorate has created a new type of judicial supervision model, which is organ supervising organ. To some degree, this is a milestone progress in the construction of judicial governance. Initiating administrative public interest litigation through procuratorate, supervising administrative organs' strict law enforcement and administration according to law, and clarifying the duties of administrative organs to perform their duties through court trials are in line with Chinese internal requirements for actively promoting the construction of a country under the rule of law in recent years.⁶

3.2. The applicable conditions of Chinese procuratorial public interest litigation

3.2.1. Responsible subject: personal information processor

Unlike GDPR, the Chinese legislation just uses the concept of personal information processors in general. It does not distinguish the controller and the processor of data, and it does not have any internal hierarchical division of the responsible entities that can substantially affect the rights and interests of personal information. The personal information processor refers to an organization or individual that autonomously determines the purpose and the means of processing in personal information processing activities, which can be divided into departments that perform personal information protection duties in the sense of public law and operators and service providers in the sense of private law. Since these two types of subjects differ sharply in the purposes, methods, and effects of processing personal information, and there is currently no differentiated regulation on them in legislative practice, many Chinese scholars argue that the types of public interest litigation

should be differentiated according to different subjects in judicial practice.

It is worth mentioning that, as one of the characteristic innovations, *Chinese Personal Information Protection Law* borrows from the *EU's Digital Market Law (Draft)* and introduces special obligations (gatekeeper clauses) for important Internet platforms. Gatekeepers are the core concept in the *EU's Digital Market Law» (draft)*. The draft adopts qualitative and quantitative standards to clarify which platforms may act as gatekeepers. *The Digital Market Law* is essentially the EU's anti-monopoly law, so the definition of gatekeepers also focuses on «platform». That is: whether there are other third-party commercial customers that provide services to users in the business form, and the existence of third-party merchants (also called third party or business users) is the core feature of the «platform». Therefore, under this law, the requirements for gatekeepers are mostly reflected in competition law considerations, that is, gatekeepers must not compete with third-party merchants in the ecology unequally. For example, merchants can find business opportunities on the platform, but merchants should also be allowed to complete transactions through their own applications or websites.

Chinese Personal Information Protection Law essentially borrows this idea, but applies it to the field of personal information protection and governance, allowing platform companies to play a greater role in personal information protection and governance. For example, the platform is required to stop providing services to product or service providers in the platform that severely violate laws and administrative regulations to process personal information. *Chinese Personal Information Protection Law* added the duty of gatekeeper companies to protect personal information in line with the global trend of Internet governance, which can more effectively protect the personal information of natural persons.⁷ However, the identification standards and the content of obligations for gatekeeper enterprises still need to be further demonstrated and refined.

3.2.2. Cause of action: infringing the rights and interests on many individuals

To be clear, acts that infringe upon the rights and interests of many personal information must be triggered by personal information processing, including two modes of action and inaction.⁸ For example, the use of personal information by information processors without the explicit consent of the information

⁶ See: *People's Procuratorate of Dongsheng District, Ordos*. The Significance of Establishing a Public Interest Litigation System by the Procuratorate.

⁷ See: *Zhang-Xinbao*. Research on the establishment of special obligations for personal information protection of gatekeepers in the Internet ecology // China Civil and Commercial Law Net: URL: <http://www.civillaw.com.cn/zt/t?id=37845> [accessed: December 2, 2021].

⁸ See: *Cheng Xiao*. Understanding and Application of Personal Information Protection Law [M]. Beijing : Chinese legal system press, 2021. P.509.

subject is a typical action model, while remedial measures failing to be taken immediately after a large-scale information leakage incident is a typical mode of inaction.

In recent years, with the advent of the big data era, the leakage of individuals' personal information has become increasingly serious. Frequent harassing phone calls and text messages not only affect the quality of life of individuals, but also infringe on the legitimate rights and interests of them. We often say that the personal information should be protected from infringement. In fact, it is not only the information itself that needs to be protected, but also the legitimate rights and interests of many individuals that are carried behind the information. Furthermore, as the information leakage gets exacerbated, a black industry chain about personal information has gradually formed, and a large amount of personal information is at the hands of middlemen and illegal users who resell the information to earn the price difference. Under these circumstances, every individual is very likely to become the next potential victim of infringement. As a result, cases of infringement of citizens' personal information are often targeted at an unspecified majority of people, and the scope of infringement is a typical social public interest. As a result, cases of personal information infringement are often aimed at an unspecified majority of people, belonging to typical social public interests. Accordingly, the personal information protection has the attributes of public interest and conforms to the scope of protection of public interest litigation. In practice, due to the wide distribution and large number of victims, many of the victims' rights have been violated without knowing it and unable to protect their legitimate rights and interests. At the same time, the difficulty of securing evidence and the high cost of safeguarding rights have also become a dilemma for citizens who are unwilling to take up legal weapons to protect their rights and interests. The Personal Information Protection Law adopted a legal form that clarified that procuratorial organs have the right to initiate public interest litigation for the protection of personal information. Public interest litigation provides sufficient legal basis and reflects the advantages of Chinese procuratorial public interest litigation system. It can effectively combat illegal and criminal acts that infringe on citizens' personal information, and protect public interests to the greatest extent from harm.

3.2.3. Litigation subject: the people's procuratorate, the consumer organization specified by the law and the organization determined by the national cyberspace administration

3.2.3.1. The people's procuratorate

A special talk about exploring the establishment of a public interest litigation system by procuratorate has been released in the *Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law*. The *Desion* pointed out that the supervision of procuratorate on administrative violations is mainly to investigate and handle cases of corruption, bribery, malfeasance and infringement by administrative staff in accordance with the law, and the scope is relatively narrow at present. The actual situation is that administrative violations constitute criminal offenses, after all, only a minority of them, and more of them are acts of disorder and omission. And the purpose of making this provision is to prompt the procuratorate to make timely suggestions and urge them to correct the illegal acts of the administrative organs and their staff discovered in law enforcement cases. This reform can start with the establishment of a supervision and prosecution system and the improvement of the procuratorial suggestion working mechanism. It has also mentioned that the initiation of public interest litigation by the procuratorate is conducive to optimizing the allocation of judicial powers, improving the administrative litigation system, and promoting the construction of a government under the rule of law.⁹

Based on the above, in recent years, remarkable achievements have been gained by the people's procuratorate in exploring and expanding personal information protection public interest litigation. In Chinese judicial practice, the people's procuratorate have gradually become the main prosecutors in personal information protection public interest litigation, giving full play to their legal supervision functions and achieving good implementation results. According to that, in the process of drafting and enacting the *Personal Information Protection Law*, China has taken the people's procuratorate as one of the prosecutors of the personal information protection public interest litigation, and fixed this in the form of law to protect personal information in practice, also providing a direct legal basis for such system. The reason why the legislator regards the people's procuratorate as the statutory litigation subject is that the function of the people's procuratorate is to be a legal supervision agency, representing the public interest. When personal information is infringed, the people's proc-

⁹ See: *China Government Network*. The Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law // URL: http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm [accessed: December 2, 2021].

uratorate initiating a public interest litigation is a statutory duty. Besides, the people's procuratorate is proficient in litigation procedures, having professional legal practitioners, and better litigation capabilities than other agencies, organizations and individuals¹⁰.

3.2.3.2. The consumer organization specified by the law

Since a public welfare organization has been legally established in China and engaged in the protection of consumer rights and interests for a long time, it has become one of consumer organizations' basic duties to protect the personal information rights of many consumers. Under existing public interest litigation system in China, for acts that infringe on the rights and interests of many consumers, the public interest litigation rights of some consumer organizations have been recognized by relevant separate laws¹¹.

There have also been cases in which consumer organizations filed public interest litigation for the protection of personal information in the courts in judicial practice, such as *Infringement dispute between Jiangsu Consumer Rights Protection Committee and Beijing Baidu Netcom Technology Co., Ltd*¹². In this case, the Consumer Protection Commission of Jiangsu Province sent the *Investigation Letter on the Issue of Obtaining Permissions for Mobile Apps* to Beijing Baidu Netcom Technology Co., Ltd. regarding the infringement of personal information security by mobile apps. The company was asked to send personnel to accept an interview about the related problems of his two mobile apps, namely «Mobile Baidu» and «Baidu Browser».

However, the company only briefly explained the problem in writing, and evaded the obligation of notification and selection of authority to the mobile phone operating system, and passively responded to the investigation of the Provincial Consumer Protection Commission. Under the urging and public supervision of the Provincial Consumer Protection Commission for many times, Beijing Baidu Netcom Technology Co., Ltd. came to accept the interview in November 2017. However, in the final rectification plan submitted, the «phone monitoring», «reading SMS MMS», «reading contacts» in «Mobile Baidu», «Baidu Browser» two apps and other related authority issues related to the security of consumers' personal information have not been rectified. At the same time,

there are no clear measures to remind consumers of the purpose, method, and scope of the rights that the APP applies for and for consumers to choose, which cannot effectively protect consumers' right to know and choose¹³.

In this regard, the Jiangsu Provincial Consumer Protection Committee believes that the two mobile apps «Mobile Baidu» and «Baidu Browser» did not inform consumers of the various permissions and purposes they obtained before they were installed. And it also obtains authorities such as «monitor phone calls, locate, read SMS, read contacts, modify system settings» and so on without the user's consent. The above authorities are not necessary to provide normal services and are beyond reasonable scope. According to the relevant provisions of the Consumer Rights Protection Law, Network Security Law, and Regulations on the Protection of Consumer Rights and Interests of Jiangsu Province, operators should clearly state the purpose, method and scope of the collection and use of personal information, and the consumers' agree; the collection of consumer personal information by business operators shall comply with the principles of fairness, lawfulness and necessity, and shall not exceed the above-mentioned principles to obtain authority, let alone illegally collect consumer personal information.

Accordingly, the Jiangsu Provincial Consumer Protection Committee filed a lawsuit with the Nanjing Intermediate People's Court in accordance with the law, requesting the court to rule Beijing Baidu Netcom Technology Co., Ltd. to stop its related infringement. The person in charge of the Jiangsu Provincial Consumer Protection Committee stated that the use of public interest litigation as a tool for apps infringing personal information security is aimed at protecting the legitimate rights and interests of many consumers, including but not limited to Jiangsu. The initiation of the public interest lawsuit not only requires Beijing Baidu Netcom Technology Co., Ltd. to stop related violations of laws and infringements, but also promotes the entire mobile App industry to attach great importance to and consciously protect consumer information security. Only safety and convenience can meet the real needs of consumers and promote the healthy development of the mobile app industry¹⁴.

It can be seen that, to a certain extent, the above case extends that consumer organizations, as the

¹⁰ See: Zhang-Xinbao & Lai-Chengyu. Understanding and Application of the Public Interest Litigation System for the Personal Information Protection [J] // Journal of the National Prosecutors College. 2021 [5]. P. 63.

¹¹ See: Dong-Chucha. On the optimized approach of personal information protection public interest litigation from the perspective of risk society [J] // Academic Exploration. 2020 [12]. P. 124.

¹² See: *Civil Written Order in Suzhou*. No. 01, 2018.

¹³ See: *China Central Television*. Jiangsu Provincial Consumer Protection Commission filed a public interest lawsuit against Baidu Expert: optimistic about its success // URL: http://finance.cnr.cn/315/gz/20180107/t20180107_524089964.shtml [accessed: December 2, 2021].

¹⁴ See: *Xinhua Net*. Jiangsu Provincial Consumer Protection Commission filed a public interest lawsuit against Baidu // URL: <https://baijiahao.baidu.com/s?id=1588987596905776748&wfr=spider&for=pc> [accessed: December 2, 2021].

main subject of prosecution of personal information protection public interest litigation, have accumulated a certain amount of imperative experience. What's more, giving consumer organizations the qualifications of prosecuting subjects in personal information protection public interest litigation can also help achieve the convergence with the consumer protection public interest litigation rules in the *Consumer Protection Law*, and realize the internal coordination of the legal system¹⁵.

3.2.3.3. The organization determined by the national cyberspace administration

Incorporating social organizations into the prosecutors of personal information protection public interest litigation is China's reference to the practices prevailing abroad. In the personal information protection, compared with public authorities, the execution cost of social organizations is lower, and compared with private subjects, social organizations' rights protection methods are more concentrated and powerful. In that case, social organizations have more advantages than public authorities and private entities in the protection of personal information. In comparative law, in order to avoid the frequent occurrence of abusive litigation, some countries have made very detailed regulations on the qualifications of social organizations to sue in public interest litigation. For example, *South Korea's Personal Information Protection Law* stipulates that the following two types of organizations can become eligible prosecutors in public interest litigation. One is an organization that has been registered with the Fair Trade Commission for three years, and has more than 1,000 members in the group. It is established for the purpose of protecting rights, while the other is non-profit private organizations that have registered with the central administration with more than 5,000 members, holding corresponding activities in the past three years¹⁶. Compared with the conditions set by foreign countries for social organizations, Chinese current legislation in this aspect is still too brief, and it is necessary to refine it as soon as possible.

4. The shortcomings of Chinese procuratorial public interest litigation on personal information protection

4.1. The legislation has not yet stipulated the prosecution order between procuratorate and social organizations

As is aforementioned, the people's procuratorate, the consumer organization specified by the law and the organization determined by the national cyberspace administration can file a lawsuit with the people's court. However, in Chinese existing legislation, there is no provision for the order in which the above-mentioned three types of subjects initiate personal information protection public interest litigation.

To be clear, the procuratorate cannot completely replace administrative law enforcement personnel in personal information protection. Regarding illegal facts linked to the infringement of personal information, administrative law enforcement officers should still conduct preliminary investigations and verifications, giving full play to the functional advantages of the administration. After all, the main function of the procuratorate in China is legal supervision, and it is impossible to always go to the front line of investigating whether individuals' personal information has been leaked. Of course, administration may be idle in performing their duties occasionally in practice, and public interest litigation procedures for administrative prosecutions will be initiated at this time. However, in this procedure, the procuratorate will first issue procuratorial recommendations to the relevant administration; only if the administration still does not actively perform, its duties within the statutory period will initiate a lawsuit. The legislator makes such a provision used the procuratorate to initiate an administrative public interest lawsuit as a supplementary means, in order to empower the administration and give full play to the function of self-correction, to supervise administration to perform their duties in accordance with the law, and then to strengthen their daily management and law enforcement. On such conditions, remedial measures should be taken as soon as possible for the damaged public interest, instead of waiting for the administrative litigation judgment to take effect before performing their duties, so as to avoid expanding losses to the public interest. In practice, it is also very important to avoid considering that the procuratorate have priority in the protection of individuals' personal information. It is because they sometimes file incidental civil public interest lawsuits in the process of initiating public prosecutions against defendants while dealing with

¹⁵ See: Zhang-Xinbao & Lai-Chengyu. Understanding and Application of the Public Interest Litigation System for the Personal Information Protection [J] // Journal of the National Prosecutors College. 2021 (5). P. 64.

¹⁶ See: Kang-Zhenhua. The main characteristics of Korea's Personal Information Protection Law and its enlightenment to China's legislation [J] // Journal of Yanbian University. 2021 (4). P. 69.

personal information protection cases, which is absolutely putting the cart before the horse.

In conclusion, it is necessary to clarify the order of initiating public interest litigation between procuratorate and statutory social organizations in order to maximize the system advantages of procuratorial public interest litigation in the field of personal information protection.

4.2. The legislation has not yet clarified the standards for procuratorate to initiate public interest litigation on personal information protection

Unlike public interest litigation cases in other areas, cases involving personal information cannot be simply filed by procuratorate. They are often more complex and larger in scales. However, Chinese current legal system lacks a specific standard according to infringement of the public interest and the degree of damage. It will result in different ways of coping with cases by procuratorates in practice. Similar cases may have different results between different procuratorates, which is not only detrimental to the protection of public interests, but also has a negative impact on judicial credibility. Therefore, China should clarify the standards that violate the public interest by issuing corresponding judicial interpretations as soon as possible. A reasonable standard for infringement on public interests should be formulated combining the unique characteristic of personal information and comprehensively, considering the following factors to provide legal guidance for the procuratorate in handling cases.

First of all, the personal information involved in the case should have value in content. It can be analyzed and compared it to a specific individual, thereby further posing a potential threat to the interests of the unspecified majority. It also should be noted that with the advancement of technology, there have been many incidents of secondary processing of personal information in order to extract more value in recent years. The alleged secondary processing of personal information refers to businesses that upload personal information is collected on the Internet to the database for professional data processing, data comparison, data analysis, etc., to obtain commercially valuable information and use it for production and operation¹⁷. Through such secondary processing methods, it is possible to simply summarize the lifestyles and preferences of certain individuals, and even more so to infer the individual's life trace, which will undoubtedly bring huge potential risks to the public interest. Accordingly, when scholars determine the infringement of public interest standards in personal information protection, it is necessary to take the

technical feature of the secondary use of personal information into consideration.

Secondly, the amount is also very important. Only when the amount of personal information involved in the case is large enough, can the unspecified majority be compared through information analysis, thereby affecting the interests of those unspecified majority. Moreover, this massive illegal use of personal information should occur in the public domain. In other words, the large-scale use of personal information held by individuals in the private sphere will obviously not harm the public interest.

Finally, the scale of dissemination of the personal information involved should also be recognized as a key factor in the standards that violates the public interest. At present, an underground industrial chain has been formed for the illegal collection, sale, and the use of personal information. Some offenders resell, reverse or exchange individuals' personal information with others several times, and even upload the personal information obtained on the dark web to trade with others, causing a large amount of personal information illegally to be made public. Among them, the illegal and criminal acts in the upper reaches are those that infringe on individuals' personal information. The crimes such as telecommunication fraud, financial fraud, extortion, illegal detention, kidnapping and even intentional homicide in the middle and lower reaches have become a social problem that cannot be ignored¹⁸. Therefore, in response to the above behavior, in addition to punishment at the level of criminal law, it should also be included in the standard that invades the public interest in the field of public interest litigation.

4.3. The litigation request of procuratorate is too simple

The litigation requests of procuratorate when dealing with personal information protection public interest litigation cases generally focus on the deletion of information, an apology, and compensation for losses. For the first two litigation claims, it is relatively easy to operate in practice, so there is nothing wrong with it. As for the claim for damages, the difficulty lies in how to determine the amount of compensation. In practice, the procuratorate's determination of the compensation amount mainly refers to the defendant's profitability. Normally, the court will support the procuratorate's litigation request. Yet even so, such punishment still fails to achieve the so-called consistent punishment for the defendant. Cases of infringement of individuals' personal information often have a large number of victims. Once the information is leaked, it cannot be compensated by other means, and it is difficult to quantify the losses to the victims.

¹⁷ See: *Mei Shao-Zu*. E-commerce legal regulations [M]. Beijing : Tsinghua University press, 2021. P. 86.

¹⁸ See: *Tu-Chunhan & Ma-Fangfei*. An Analysis of Several Issues Concerning the Protection of Citizens' Personal Information in Procuratorial Public Interest Litigation [J] // Chinese Prosecutor. 2020 (08). P. 70.

Moreover, the transaction price of personal information is often relatively low, which is not equal to the potential risks of information leakage¹⁹. In practice, there have been cases in which the defendant sold more than 40,000 pieces of individuals' personal information, because he only made a profit of 700 yuan, and the final compensation amount was only 700 yuan²⁰. Regrettably, in Chinese current legislative system, there is no clear legislation on compensation standards for infringement of individuals' personal information in the aspect of public interest litigation. If things go on like this, it will be difficult for us to act as a warning and deterrent against criminals who infringe upon individuals' personal information.

In practice, the procuratorate often file incidental civil public interest litigation in response to serious or particularly serious cases in the process of reviewing and prosecuting the crime of infringing on personal information. According to the provisions of Article 253 of *the Criminal Law*, any violation of individuals' personal information to the extent that the circumstances are serious or above shall be subject to fines. The penal standard for the crime of infringing on individuals' personal information in *the Criminal Law* is mainly to comprehensively consider the severity of the defendant's crime, the number of illegal gains, and the attitude of guilty and repentance. In addition, according to the relevant judicial interpretations, the amount of fines should generally be more than one time and less than five times the defendant's illegal income. Applicable to the field of personal information protection procuratorial public interest litigation, procuratorate can appropriately refer to the above standards, comprehensively considering the quantity, content, and dissemination scale of the personal information involved in the case to determine the defendant's compensation standard.

Conclusion

Since the beginning of the 21st century, driven by the wave of digitalization, while experiencing various conveniences brought by data technology,

people also face risks such as excessive collection of personal information, illegal disclosure of personal information, and illegal trading of personal information. In order to solve this problem, legislation in the field of personal information protection has been rapidly accelerated around the world in recent year. As the largest developing country in the world, Chinese active promotion of its own personal information protection legislation is not only a measure to respond to the world trend, but also the result of Chinese legal system advancing with the times, self-development and continuous improvement. It also responded to the concerns of the state, society and individuals regarding the protection of personal information in a timely manner, focusing on demonstrating Chinese approach to the rule of law for personal information protection. Not only that, the promulgation of *Chinese Personal Information Protection Law* marks that China has entered into the era of higher level in the aspect of personal information protection. *Chinese Personal Information Protection Law* provides comprehensive regulations on relevant systems, which reflects the determination of the Chinese government to safeguard the basic rights and interests of citizens, and provides a guarantee for the standardized collection and utilization of personal information, laying a solid foundation for Chinese network society and digital economy. It is a comprehensive legal norm focusing on the protection of personal information rights and the behavior of information processing. Based on a deep understanding of the legislative evolution, legislative purposes, highlights and characteristics of this law, Chinese experience and solutions can be provided for the personal information protection, an issue of common concern throughout the world. Of course, with the continuous development of society, the law inevitably lags behind. Confronted with more new situations and new problems that may arise in the future, *Chinese Personal Information Protection Law* needs to respond in a timely manner and continue to improve, which is also the optimal legal answer to the practical interests of all that live in the Internet age.

¹⁹ See: Sun-chuanxi & Cui Xue. Difficulties in Criminal Incidental Civil Public Interest Litigation Cases involving Infringement of Citizens' Personal Information [J] // Chinese Prosecutor.2020 (14). P. 68.

²⁰ See the Criminal Verdict of the First Instance in Shanghai, No. 1131, 2020.