

## Original Paper

# On Public Interest in Public Interest Litigation

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### Abstract

*In 2017, China officially adopted the amendments to Article 55 of the Civil Procedure Law and Article 25 of the Administrative Procedure Law, establishing an empowering norm for public interest litigation initiated by procuratorial organs at the level of substantive law. This move addressed the long-standing institutional framework deficiencies (Li, X., 2024, pp. 169-177) in China's procuratorial public interest litigation. However, due to its late start and the diversification of the concept of "public interest", the law still follows a design approach that combines "specific enumeration + catch-all clause" (Li, X., 2024, pp. 169-177), failing to provide a precise definition of the scope of "public interest". Instead, it limits the cases in which procuratorial organs can initiate public interest litigation through traditional typological enumeration. The traditional typological approach has inherent flaws, such as incompleteness and inadequacy, making it unable to address the challenges in defining practical interests. To address this, a revised typological approach could be adopted to exclude situations that do not fall under public interest, thereby reducing the uncertainty surrounding the concept of public interest and providing intellectual support for improving relevant legislation and guiding judicial practice.*

### Keywords

*public interest, public interest litigation, procuratorial public interest litigation*

### 1. Introduction

In October 2014, the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China adopted the "Decision on Several Major Issues Concerning the Comprehensive Promotion of Governing the Country According to Law", which for the first time proposed exploring the establishment of a system where procuratorial organs initiate public interest litigation. In May 2015, the 12th meeting of the Central Leading Group for Comprehensively Deepening Reform reviewed and approved the "Pilot Program for Reforming Public Interest Litigation Initiated by Procuratorial

Organs”. In July of the same year, the Standing Committee (Wang, Y. F., 2021, pp. 26-33) of the National People’s Congress made a decision to authorize the Supreme People’s Procuratorate to conduct a two-year pilot program, thus securing the institutional “ticket” for public interest litigation initiated by procuratorial organs. To facilitate the smooth implementation of the pilot program, the Supreme People’s Court and the Supreme People’s Procuratorate (hereinafter referred to as the “two high courts”) promptly issued a series of supporting measures, including the “Pilot Program for Public Interest Litigation Initiated by Procuratorial Organs”, the “Implementation Measures for the Pilot Program of Public Interest Litigation Initiated by People’s Procuratorates”, and the “Implementation Measures for the Pilot Program of People’s Courts in Adjudicating Cases of Public Interest Litigation Initiated by People’s Procuratorates” (Wang, Y. F., 2021, pp. 26-33). This series of measures not only marked the initial formation of the top-level design for public interest litigation initiated by procuratorial organs but also heralded a critical moment for the breakthrough of China’s public interest litigation system.

In May 2017, President Xi Jinping personally presided over the 35th meeting of the Central Leading Group for Comprehensively Deepening Reform, fully affirming the significant achievements made in the pilot work of public interest litigation by procuratorial organs. In June of the same year, the Standing Committee of the National People’s Congress separately adopted amendments to the Civil Procedure Law and the Administrative Litigation Law of the People’s Republic of China (hereinafter referred to as the “Administrative Litigation Law”), adding provisions for procuratorial organs to initiate public interest litigation. Since then, the system of public interest litigation by procuratorial organs has been officially codified into law, ushering in a new chapter of legalization and standardization of public interest litigation in China.

## **2. The Unclear Implication of Public Interest Has a Negative Impact on the Practice of Prosecution**

In public interest litigation cases, the coexistence and interweaving of diverse interests form the basis of the complexity in case handling. Specific litigation objects often carry multi-level public interests, which imposes higher demands on the typification of cases. Scientific classification not only concerns the selection of litigation procedures but also directly impacts the determination of claims and the accuracy of judgments. However, there are prominent issues in current judicial practice:

### *2.1 The Normative Dilemma of the Application of Law*

In current public interest litigation documents and court judgments, there is a widespread tendency towards “natural interpretation”: after listing the facts of violation, it often directly assumes that national interests or public welfare have been harmed, without providing necessary reasoning. This practice has three major drawbacks: first, it neglects to explain and justify the damaged public interest, weakening the persuasiveness of the judgment; second, it fails to effectively respond to the reasonable expectations of parties involved and the general public regarding the definition of public interest; third,

it hinders the standardized development of the public interest litigation system. This normative deficiency urgently needs to be addressed through typological methods.

### *2.2 The Identification Problem of Multiple Public Interests*

In many public interest litigation cases, specific entities may carry multiple public interests, and the relationships between these interests are not always clear. For example, actions that damage natural resources can involve both the loss of state-owned property interests and environmental interests (such as hunting key protected wildlife); ecological destruction or environmental pollution by producers and operators may lead to significant safety hazards or accidents; the governance of junk food around schools involves both the interests of minors and public food safety; the abuse of market dominance is not only within the scope of antitrust public interest litigation but also an illegal act that harms the rights of an unspecified majority of consumers; personal information protection also addresses the function of combating telecom fraud. These cases illustrate that there is a complex intersection between the identity interests of specific entities and the functional interests of specific objects, yet current laws lack clear standards for choosing procedures and determining claims. The ambiguity of public interest not only affects the precision and standardization of public interest litigation but also brings numerous challenges to procedural choices and claim determinations in judicial practice.

Based on the essential characteristics of public interest, it is neither appropriate nor easy for law to provide a clear definition. This view is widely recognized in academic circles: for instance, Chen Xinmin, a scholar from Taiwan region, points out that the content and beneficiaries of public interest are uncertain and difficult to define; his reasoning is that the content and beneficiaries of public interest are uncertain. German scholar T.Laeufer argues that the concept of interest depends on changing social, political, and ideological factors; this legislative choice is reasonable: on one hand, it acknowledges the characteristic of public interest as an uncertain legal concept, and on the other hand, it reserves space for judicial discretion. When disputes arise over public interest, judicial authorities should make value judgments based on specific case circumstances, achieving the concretization of the concept through typological methods.

## **3. The Need for Typology of Public Interest**

Public interest, though difficult to define precisely, can be supplemented through typification. As scholars have noted, by continuously refining constitutional and legal interpretations, a scientific system for typifying public interests can be established. From a practical standpoint, typifying public interests has positive implications at least in the following areas (Li, X., 2024, pp. 169-177):

### *3.1 The Clarification of the Division of Interests*

Public interest stems from the sharing of private interests, but it is not merely a simple aggregation of these interests. In contemporary society, public interest has evolved into a new type of interest, with its boundaries increasingly blurred with those of individual and national interests. The typological approach helps clarify these interest boundaries, providing a basis for the proper exercise of public

power. The intuitive nature of types is their greatest advantage, which is fully demonstrated in all typological objects. Through this method, the concept of public interest becomes more practical and feasible in legal practice. Specifically, typology not only reflects the specific forms of interests but also provides a more detailed and clear structure, making it a clear guide in judicial decisions. It enables judges to more accurately identify and consider various potential interest relationships when handling cases, thereby enhancing the fairness and efficiency of judicial rulings. Typology is a powerful tool that offers judges a framework to make reasonable judgments based on legal provisions and specific circumstances, ensuring the correct implementation of the law and the maintenance of social justice.

### *3.2 The Diversification of Interest Forms*

The publicization of spiritual interests. Under the current legal framework, the concept of public interest has transcended the narrow scope traditionally limited to property interests. With social development and the diversification of people's needs, the trend toward the publicization of spiritual interests is becoming increasingly evident. This trend not only manifests in the pursuit of material wealth but also in the respect and protection of intangible interests such as spiritual values, moral beliefs, and historical memory. For example, China's General Principles of Civil Law explicitly include the personality rights of heroes and martyrs within the realm of public interest. This approach fundamentally differs from the past practice of equating public interest with property rights. It signifies that the law recognizes and protects the ultimate value represented by these heroes, which is not just a compensation for their individual rights but also a safeguard and inheritance of the collective memory of the entire nation. When handling cases involving the personality rights of heroic figures, the Supreme People's Court particularly emphasizes the role these heroic deeds have played in modern Chinese history and uses this as a critical basis for evaluating whether an infringement constitutes harm (Zhang, X. Q., 2019, pp. 149-160). Through case analyses of heroes like the "Five Heroes of Langya Mountain" and "Qiu Shaoyun", the Supreme People's Court demonstrates a unique judicial wisdom. These judgments do not focus solely on the events themselves but integrate the national spirit, patriotism, and core socialist values behind the cases, thereby establishing the status of the personality rights of heroes and martyrs within the realm of public interest. This approach reflects the law's emphasis on protecting spiritual interests and demonstrates society's high recognition of positive values such as justice, courage, sacrifice, and loyalty. Therefore, we can see that the trend of publicizing spiritual interests is gradually becoming an indispensable part of legal practice in today's society. It requires legal professionals not only to accurately identify and protect property interests but also to deeply understand and safeguard intangible interests related to the soul, emotions, and beliefs. Such a legal philosophy helps build a more harmonious and comprehensive social network, promoting overall social progress and cultural prosperity.

Secondly, the standardization of analogical application. When exploring the intersection of law and social ethics, we have discovered an enlightening theoretical framework—the analogy method. Through this approach, special personality rights such as those of heroes and martyrs can be extended

to broader public interests. However, when it comes to concepts like public order and good morals, and social ethics, the issue becomes more complex. These are typically seen as spiritual wealth, which often cannot be clearly distinguished at the qualitative level. Nevertheless, from a practical standpoint, whether other spiritual interests can be included in the category of public interest still requires clear legal definition. Currently, the legal community is facing a significant trend shift: in modern society, the importance of property rights is gradually diminishing while personality rights are increasingly valued. People's focus has also shifted from the economic domain to a broader level of civilizational development. The definition of public interest is evolving from basic material needs for human survival to deeper spiritual and cultural demands. This transformation not only reflects social progress but also demonstrates people's increased pursuit of quality of life and attention to the spiritual and cultural dimensions. In this context, concepts like public order and good morals, as well as social ethics, are no longer confined to traditional moral norms or social customs; they have become important foundations for building a harmonious society and maintaining fairness and justice. These intangible values, though unquantifiable in monetary terms, play an irreplaceable role in maintaining social order and promoting civic qualities. Therefore, they should be included in the realm of public interest, providing a common code of conduct for all members of society. However, due to the unique nature of such spiritual interests, their status as part of public interest may spark some controversy. On one hand, it demands that the law give them sufficient attention and protection; on the other hand, ensuring that the realization of these interests does not infringe upon individual rights while also fulfilling the public's aspiration for a better society is a serious issue that the legal community must carefully consider and address.

### *3.3 Standardization of Litigation Procedures*

The high abstraction of public interest poses significant challenges to the initiation of administrative public interest litigation procedures. This can lead to potential overreach or inaction by the procuratorate's right to initiate such lawsuits, thereby undermining the institutional goals of public interest litigation. Within the framework of administrative public interest litigation, a reasonable division of authority should be: administrative agencies can conduct self-reflection, procuratorates must not overstep their bounds in legal supervision, and courts must remain objective and neutral in judicial proceedings. Therefore, the legislative focus of China's administrative public interest litigation should shift from the scope of cases accepted to the standards for initiating cases.

Taking the field of housing demolition as an example, the ambiguity of the concept of public interest has produced multiple negative impacts in practice: first, it is difficult to provide clear guidance to parties involved; second, the scope of authority of administrative agencies is too broad, increasing the risk of abuse of power, especially in land expropriation and demolition. Third, it hinders judges from making correct judgments on whether there is a public interest in specific cases. In response to this, this article proposes a "categorized" definition method that can clearly delineate the boundaries between public and commercial land use while strictly defining the premise of public interest, thereby curbing

illegal expropriation. Such an institutional arrangement not only safeguards public interest but also delineates clear boundaries for the exercise of administrative power, contributing to a balance between public and individual interests.

#### **4. Judicial Determination and Procedural Regulation of Public Interest**

##### *4.1 Establish Regular Procedures and Mechanisms*

In the process of public interest litigation, it is necessary to distinguish the relationship between public interest litigation and ordinary litigation. Generally speaking, when there is no dispute arising from public interest, a normal litigation mechanism should be established to ensure that public interest is recognized. In the process of normally controlling public interests, there is an argument that such control is a democratic procedure. In administrative expropriation practices, there are cases where the expropriated party votes to determine the compensation standards. Some scholars argue that actions for social public interest should be evaluated by the general public. On this basis, various stakeholders naturally judge whether the expropriation action aligns with public interest through voting (Chen, H. Y., 2020, pp. 79-80).

The view that public interest judgments should be entirely left to public vote is open to debate. While democratic principles serve as a crucial benchmark for public interest judgments, it is not advisable to simply adopt a voting system in individual cases. This argument is based on the following considerations: First, the scope of beneficiaries from expropriation actions often has uncertainty and diffuseness, making it difficult to accurately define the voting subjects. If the voting range is too narrow, such as being limited to the affected population, it may fail to gain majority support; conversely, if the range is too broad, it might fail to truly reflect the wishes of those directly involved. Second, from an administrative law perspective, expropriation, as a mandatory administrative action, its nature of power dictates that public interest judgments cannot be entirely left to the public; otherwise, it would undermine the legal authority of administrative actions.

However, this does not mean that the significant role of democratic procedures in the expropriation process can be overlooked. To ensure the legitimacy of expropriation decisions, it is recommended to establish a diversified democratic participation mechanism within routine procedures: first, hold hearings according to law to ensure the involvement of multiple stakeholders such as those being expropriated, experts, scholars, and the public; second, improve information disclosure systems to promptly release relevant land expropriation information and widely solicit social opinions; third, establish a regular communication and consultation mechanism to enhance mutual understanding and trust among all parties, preventing and resolving potential disputes. This institutional design not only embodies democratic principles but also upholds the authority of administrative actions, achieving a balanced protection of public interests and individual rights.

#### *4.2 Public Interest Is Identified Through Judicial Means*

Public interest, as a core concept in the construction of the rule of law, directly concerns the legitimacy of national governance and the realization of social equity and justice. In response to the ambiguity and practical difficulties in defining public interest today, it is urgent to develop systematic institutional improvement paths from both judicial and legislative perspectives.

First, it is essential to recognize the core role of judicial authorities in defining public interest and to strengthen their statutory powers and judicial review functions. According to the Administrative Litigation Law, the People's Courts, as the ultimate adjudicating body for resolving disputes, legally possess the authority to review public interest controversies. Although assessing public interest is highly complex and courts face numerous practical challenges under the current system, from the perspective of the rule of law, judicial authorities are the only qualified entities to resolve public interest disputes. To this end, the court's review authority over government administrative actions (such as expropriation and demolition) should be further detailed to ensure the independence and authority of judicial reviews. At the same time, in administrative litigation, defining public interest should be a central aspect of case proceedings, requiring courts to clearly identify issues related to public interest in their judgments. By providing clear standards and procedures for defining public interest through judicial interpretations or guiding cases, unified guidance can be offered to judicial practice, thereby enhancing the predictability and credibility of judicial decisions (Gao, Z. H., 2022, pp. 53-62).

Secondly, the typification and concretization of the concept of public interest should be promoted, granting judges discretionary power in individual cases. As an uncertain legal concept, public interest has a high degree of abstraction and openness in its meaning and scope. Therefore, it is necessary to specify the typification of public interest in laws such as the Property Law and the Land Management Law, clearly defining its specific scope and applicable scenarios. For example, public interest can be categorized into specific areas such as ecological environment, cultural heritage, and public safety, to enhance the operability of the law. At the same time, judges should be allowed to interpret and concretize public interest flexibly based on the specific circumstances of individual cases, in conjunction with the spirit of the law, legislative intent, and social needs. Through the accumulation of case law and the development of theories, judicial standards for defining public interest can gradually be formed, providing practical experience for the typification of legislation. This process of "concretization" does not aim to establish a fixed standard for similar cases but rather involves dynamic adjustments according to the spirit and purpose of the law, taking into account the social context and needs of each specific case. This approach ensures both the stability and flexibility of the law while achieving scientific and reasonable definitions of public interest.

Secondly, a mechanism for balancing interests in public interest disputes should be established, and the interest protection mechanisms in expropriation and requisition procedures should be improved. Defining public interest is essentially a process of balancing interests, requiring a reasonable balance

between national development needs, social public interests, and citizens' private property rights (Lu, C., 2018, pp. 25-35). To this end, in public interest disputes, courts should comprehensively consider macro backgrounds such as urbanization and industrialization, weigh the interests of all parties, and ensure the rationality and fairness of defining public interest. At the same time, in expropriation and requisition procedures, the right to information, participation, and redress for those whose property is expropriated should be clearly defined, ensuring their legitimate rights and interests are fully protected. By establishing a hearing procedure for expropriation and requisition decisions, stakeholders can participate and express their opinions, enhancing the transparency and fairness of the process. Additionally, the principle of interest balancing should be introduced, requiring administrative agencies to fully consider the legal implications of public interest and social needs in decision-making, avoiding the abuse of power that could harm citizens' legitimate rights and interests.

Finally, international experience should be drawn upon to optimize the procedural control of public interest determination and strengthen institutional safeguards for defining public interests. From a comparative law perspective, most countries and regions rely on judicial bodies to make specific judgments about public interests. For example, the French Administrative Court adopts a case-by-case review approach, combining specific facts of cases with social needs to dynamically define public interests. China can draw on this experience, allowing courts to conduct case-by-case reviews of public interests in expropriation and requisition, ensuring they meet the legal conditions and procedures. At the same time, a "Law on Expropriation and Requisition" should be formulated to clarify the procedural rules for determining public interests, including the definition of powers of expropriation agencies, initiation and decision-making procedures, and compensation assessment procedures. A supervision mechanism should be introduced into the process, with the National People's Congress or specialized institutions overseeing whether government expropriation actions align with public interests, preventing the abuse of power. Additionally, collaboration mechanisms between the judiciary and administration should be strengthened, establishing communication and coordination mechanisms between judicial bodies and administrative agencies in public interest disputes to ensure effective integration of judicial review and administrative decision-making. Through forms such as judicial recommendations (Zhang, X. Q., 2019, pp. 149-160), administrative agencies should be encouraged to fully consider the legal implications and social needs of public interests in their decisions, thereby achieving scientific and rule-of-law-based determination of public interests, ensuring that private rights are adequately protected during the exercise of public power, and preventing unlawful harm caused by the exercise of public power (Jiang, X., 2008, pp. 45-56).

## 5. Conclusion

The public interest in public interest litigation is a legal proposition with Chinese characteristics, which not only reflects the general principle of rule of law, but also is deeply rooted in China's historical tradition and current national conditions.

From a historical perspective, although China has drawn on Western legal experiences in its modernization process, it faces unique contemporary challenges in the modernization of its governance system and capabilities. This uniqueness is primarily reflected in two aspects: First, the concept of "the world as a commonwealth" in traditional Chinese culture has shaped a distinctive model of public interest cognition; Second, the path to modernization after the founding of New China fundamentally differs from the nation-building approaches during the Western Enlightenment period.

From a practical perspective, there are significant differences between the West and China in terms of the era's demands for public interest protection and governance resources. During the Enlightenment period in the West, the concept of public interest existed as a "political adhesive" that helped consolidate dispersed interests into a cohesive whole. In contrast, under the Chinese context, public interest plays a crucial role in preventing the atomization of interests and maintaining social integration, acting as a "social governance brake" during the transition from a monolithic to a diversified interest landscape. Especially in today's context of diversified interests, China faces the important task of reshaping a community of shared interests and preventing the disconnection between society and the state. In this process, China has developed a unique mechanism for protecting public interest: under the leadership of the Party, various government agencies allocate public resources through division of labor rather than power checks and balances, providing institutional guarantees for the protection of overall interests as individual rights expand within the framework of the rule of law.

In terms of institutional improvement, administrative public interest litigation, as an important institutional design for safeguarding public interests, not only requires sound criteria for initiation but also necessitates the establishment of a comprehensive procedural rule system. To this end, it is recommended to amend the Administrative Litigation Law or enact a dedicated (Chen, H. Y., 2020, pp. 79-80) Public Interest Litigation Law to systematically construct a normative system that includes rules on claims, trial procedures, adjudication, enforcement, and supervision, thereby providing stronger institutional support for the protection of public interests (Gao, Z. H., 2022, pp. 53-62). This process of institutional development should fully reflect the requirements of the socialist rule of law with Chinese characteristics, drawing on international experience while emphasizing the creative transformation and innovative development in line with China's governance traditions.

## References

- Chen, H. Y. (2020). Actual Judgment of Public Interest in Public Interest Litigation. *People's Procuratorate*, 2020(02), 79-80.
- Gao, Z. H. (2022). Public interest: The value purpose and normative structure of administrative public interest litigation. *Academic Circle*, 2022(07), 53-62.
- Gao, Z. H. (2022). Public interest: The value purpose and normative structure of administrative public interest litigation. *Academic Circle*, 2022(07), 53-62.
- Jiang, X. (2008). Interpretation of the Principle of Proportionality, Construction and Reflection of the Structure of Law. *Law Science (Journal of Northwest University of Political Science and Law)*, 2008(05), 45-56.
- Li, X. (2024). Three Major Problems of China's Public Interest Litigation Legislation. *Social Sciences Table*, 2024(06), 169-177.
- Li, X. (2024). Three Major Problems of China's Public Interest Litigation Legislation. *Social Science Forum*, 2024(06), 169-177.
- Lu, C. (2018). From judicial process to organizational incentive: China's Experiment in Administrative Public Interest Litigation. *Law and Business Research*, 35(05), 25-35.
- Wang, Y. F. (2021). Research on the Investigation Power of Procuratorate in Administrative Public Interest Litigation. *Journal of Henan Radio and TV University*, 34(02), 26-33.
- Zhang, X. Q. (2019). Comparative Study on Public Interest Litigation in Procuratorate. *Journal of National Prosecutors College*, 27(01), 149-160.