

## *Original Paper*

# Dilemma and Solution: On the Prosecution Subject of Civil Public Interest Litigation for Personal Information Protection

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### **Abstract**

*Combined with the judicial practice of personal information protection civil public interest litigation and the provisions of Article 70 of the Personal Information Protection Law, there is a great controversy between the theoretical and practical circles on the subject of such litigation. Although the existing provisions define the subject of prosecution as three categories: the people's procuratorate, the consumer organization stipulated by law and the organization determined by the national network and information department, the problems of unclear scope of the subject, unclear scope of functions and unclear order of prosecution have not been solved. In order to improve the effectiveness of the protection of personal information rights and interests, we should clarify the scope of the functions of each prosecution subject, straighten out the order of prosecution, confirm the status of the procuratorial organ as a supplementary prosecution subject, expand the scope of "consumer organizations stipulated by law," and clarify the conditions of "organizations determined by the national network information department."*

### **Keywords**

*personal information protection, civil public interest litigation, subject of prosecution*

## **1. Presentation of Questions**

With the rapid development of science and technology, information has become a resource as important as material and energy, which has an important impact on all aspects of our lives. At the same time, the infringement of personal information is becoming more and more rampant. How to protect the personal information security of citizens has become the focus of the country and the whole society. Article 70 of the Personal Information Protection Law formally establishes the public interest litigation clause for personal information protection, which clearly stipulates that the people's procuratorates, consumer organizations stipulated by the law, and organizations determined by the national network information

department can file public interest litigation against individuals who process personal information in violation of the law and infringe on the rights and interests of many individuals. However, the provisions of this article on the subject of public interest litigation for personal information protection are relatively general. It does not specify which organizations the consumer organizations stipulated by the law and the organizations determined by the national network information department are, nor does it specify the division of the scope of the case and the arrangement of the prosecution order of the public interest litigation filed by each prosecution subject. When the personal information of many individuals is infringed, the subject of prosecution is not clear, the division of labor and the order between the subjects are not clear, and there may be a situation of multi-party prosecution or no one prosecution, which leads to the protection of the legitimate rights and interests of the infringed subject, the confusion of judicial order and the waste of judicial resources. Therefore, it is necessary to re-examine the provisions of the subject of public interest litigation for personal information protection, clarify the scope of the subject, clarify the scope and order of the cases filed by the three subjects, and relieve the judicial practice dilemma of civil public interest litigation for personal information protection.

## **2. Inspection of the Provisions of the Subject of Civil Public Interest Litigation for Personal Information Protection**

Article 70 of the “Personal Information Protection Law” regards the procuratorate, consumer organizations stipulated by law and organizations determined by the national network information department as the subject of public interest litigation for personal information protection. The provisions of this article on the subject of prosecution are both pluralistic and limited.

### *2.1 The Procuratorate*

Personal information collection is often aimed at an unspecified majority of people. Large-scale data use and processing reflect its public welfare characteristics, which lays the foundation for the procuratorate as the subject of public interest litigation for personal information protection. The ‘Opinions of the Central Committee of the Communist Party of China on Strengthening the Legal Supervision of the Procuratorial Organs in the New Era’ proposes that the procuratorial organs should actively and steadily expand the scope of public interest litigation cases and include personal information protection cases. Article 58 of the Civil Procedure Law also provides the possibility for the procuratorial organs to file public interest litigation for personal information protection by not completely enumerating acts that damage the public interest. As a legal supervision organ, the procuratorial organ shoulders the responsibility of safeguarding national interests and social public interests, and has professional personnel and sufficient resources. It has advantages in investigating and collecting evidence, undertaking litigation costs, and practicing legal skills. Therefore, it is an inevitable choice to list the procuratorial organ as the prosecution subject of public interest litigation for personal information protection.

## *2.2 Consumer Organizations Stipulated by Law*

Whether consumer organizations can become the subject of prosecution in public interest litigation for personal information protection is controversial when formulating the “Personal Information Protection Law,” but the final bill clearly states that “consumer organizations stipulated by law” can become the subject of prosecution in public interest litigation for personal information protection. There are two reasons: First, it is the responsibility of consumer organizations to participate in the protection of consumer personal information security. Article 47 of the Law on the Protection of the Rights and Interests of Consumers clarifies that the Chinese Consumers’ Association and the consumer associations established in provinces, autonomous regions and municipalities directly under the central government can file public interest litigation against acts that infringe the legitimate rights and interests of many consumers. Therefore, the consumer organizations stipulated by law can become the subject of public interest litigation for personal information protection. This provision also realizes the connection between the “Personal Information Protection Law” and the “Consumer Protection Law” and maintains the unity of the law. Second, in practice, there have been judicial cases in which consumer organizations have filed public interest litigation against infringement of many consumers’ personal information, and have achieved good legal and social effects. Therefore, consumer organizations, as the prosecution subject of public interest litigation for personal information protection, have certain preliminary practical basis and are also in line with the purpose of their establishment.

However, according to the current legislation, consumer organizations, as the subject of public interest litigation for personal information protection, are limited in the scope of cases and the level of subjects. First, consumer organizations stipulated by law only file public interest litigation on acts that damage personal information related to market activities and consumer behavior, and do not have the qualification to sue for infringements that infringe on the personal information of multiple people other than such cases. Second, the consumer organizations that have the right to file public interest litigation for personal information protection as the subject of litigation only refer to the Chinese Consumers’ Association and the consumer associations at the provincial, autonomous regional and municipal levels. Other levels of consumer organizations have not been given this right. However, the number of consumer organizations above the provincial level is small, and their human, financial and energy resources are limited. Therefore, the role of consumer organizations in public interest litigation for consumer personal information protection is limited (Yang, 2024).

## *2.3 The Organizations Determined by the National Network Information Department*

Article 70 of the “Personal Information Protection Law” clearly defines the organizations determined by the national network information department as one of the subjects of public interest litigation for personal information protection. Compared with public power supervision, social organizations are more likely to exert their professional advantages, with simple procedures and high efficiency; compared with individual rights protection, social organizations have stronger professional background and litigation ability. Limiting the authorized social organizations to the scope determined by the national network

information department can avoid the abuse of procedures such as repeated prosecutions and multiple prosecutions, and save judicial resources. (Zhang & Shu, 2022) However, the provisions of the “Personal Information Protection Law” on social organizations as the subject of public interest litigation for personal information protection are too simple and need to be refined. The practical experience of public interest litigation filed by social organizations in China is insufficient, but the value of social organizations in civil public interest litigation for personal information protection cannot be denied. The provisions of Article 70 of the “Personal Information Protection Law” is just a useful attempt on how social organizations can effectively participate in public interest litigation and safeguard public interests.

### **3. An Empirical Investigation on the Prosecution Subject of Civil Public Interest Litigation for Personal Information Protection**

This paper selects the judicial case database of Peking University as the sample database, and uses ‘civil public interest litigation’ and ‘personal information’ as keywords to search. As of March 2024, a total of 67 relevant judgment documents have been retrieved. Among them, there are 64 cases in which the procuratorial organ is the subject of civil public interest litigation for personal information protection, with a proportion of 96%; consumer organizations as the subject of prosecution in 3 cases, the proportion of 4%; no other prosecution subjects have filed civil public interest litigation for personal information protection.

Based on the above data, it can be seen that the prosecution subjects of civil public interest litigation for personal information protection in judicial practice are procuratorates and consumer organizations, and there are no other organizations. And the number of public interest litigation filed by the procuratorate is 21 times that of consumer organizations. Due to the short implementation time of the ‘Personal Information Protection Law’, China’s personal information protection civil public interest litigation is still in its infancy. The procuratorial organs have the advantages that consumer organizations and other social organizations do not have in terms of litigation ability and litigation cost burden. In this context, the civil public interest litigation initiated by the procuratorial organs for personal information protection has practical needs. However, too much reliance on procuratorial organs in civil public interest litigation for personal information protection may lead to low participation enthusiasm of the other two types of subjects, neglect of practical exploration, difficulty in giving full play to their advantages, and failure to achieve the legislative purpose of protecting the rights and interests of personal information. (Wang, 2023)

The main reasons are as follows:

First of all, the scope of the main functions of the prosecution is unknown. Although the “Personal Information Protection Law” clearly stipulates that the people’s procuratorate, consumer organizations stipulated by law and organizations determined by the national network information department can file civil public interest litigation for personal information protection, the scope of each subject’s protection of personal information rights and interests is not the same. These three types of subjects are different organs or organizations with different functions and purposes, and their functions in protecting the rights

and interests of personal information are different. The existing law does not stipulate the scope of the exercise of the functions of the three types of subjects, which easily leads to operational obstacles such as multiple prosecutions, non-subject prosecutions or high participation of some subjects in the public interest litigation of personal information protection, while the prosecution function of other subjects is useless. Due to the unclear scope of functions, the determination of the subject of such disputes is not efficient, and the situation of relying too much on the procuratorial organs to file civil public interest litigation for personal information protection is formed.

Secondly, Article 70 of the 'Personal Information Protection Law' stipulates three types of subjects that can file civil public interest litigation for personal information protection, but does not stipulate the order of prosecution, which is controversial in academic and practical circles. Before the introduction of the 'Personal Information Protection Law', the procuratorial organs had carried out public interest litigation for many years and accumulated rich practical experience. After the civil public interest litigation of personal information protection was clearly stipulated by law, the procuratorial organs could quickly enter the role and play an important role. In addition, because the 'Personal Information Protection Law' does not clearly stipulate that procuratorial organs need to file such civil public interest litigation on the premise that other organizations do not file it, it assumes the main public interest litigation obligations based on path dependence. However, this will also make the other two types of prosecution subjects unable to play their role. Therefore, only by clarifying the order of prosecution can we help all subjects work together to achieve the best legal effect of protecting the rights and interests of personal information. Thirdly, as the subject of civil public interest litigation for personal information protection, the consumer organizations stipulated by law refer to the Chinese Consumer Association and the consumer associations established in provinces, autonomous regions and municipalities directly under the central government in accordance with the existing legal provisions. The scope of this provision is narrow, resulting in a low prosecution rate of consumer organizations. This provision excludes consumer organizations below the provincial level from the subject of prosecution, which is incompatible with China's huge consumer market and increasing consumer personal information infringement disputes. As a result, a large number of such disputes cannot be resolved through public interest litigation for personal information protection, and the purpose of protecting consumer information rights cannot be achieved.

Finally, the 'organization determined by the national network information department' actually refers to what organization, the lack of legal express authorization. At present, this provision is still at the level of system design, and there is no precedent in the existing public interest litigation system in China, which needs to be clarified by legislation and judicial interpretation. Therefore, at present, the subject of civil public interest litigation for personal information protection in practice is only procuratorial organs and consumer organizations, and there are no other organizations. Among them, the subject ownership and hierarchy of the 'national network information department', the type and determination method of the organization, the criteria and procedures for determination, etc., need to be clarified in future legislation or judicial interpretation.

#### **4. The Normative Path of Personal Information Protection Civil Public Interest Litigation Prosecution Subject**

##### *4.1 Clarify the Scope of Functions of Each Prosecution Subject to File Public Interest Litigation for Personal Information Protection*

First, the scope of functions of the procuratorial organs to file public interest litigation for personal information protection is not limited. The procuratorial organ is a legal supervision organ, which belongs to the representative of the public interest, and does not specifically protect certain types of public interests. Therefore, the procuratorial organ should enjoy the complete prosecution function. Second, the function of consumer organizations to file public interest litigation for personal information protection under the law is to damage the personal information of many consumers related to market activities and consumer behavior. According to the provisions of the “Consumer Protection Law,” when there is a violation of the personal information of many consumers, even without the provisions of Article 70 of the “Personal Information Protection Law,” the relevant consumer organizations can also file public interest litigation. Therefore, some scholars believe that it is not necessary to stipulate the “consumer organization stipulated by law” in the “Personal Information Protection Law” as the subject of public interest litigation. (Huang, 2023) Third, the scope of functions of the organization determined by the national network information department to file public interest litigation for personal information protection is not limited, and its conflict with the procuratorial organ in the exercise of the prosecution function can be clarified through the order of prosecution. Based on the legislative purpose of protecting the rights and interests of personal information, the organizations determined by the national network information department have the right to file public interest litigation against the behavior of infringing on the personal information of many subjects, and the scope of functions should not be limited.

##### *4.2 Straighten out the Prosecution Order of Different Prosecution Subjects*

There has been controversy in the theoretical circle about the order of the subject of prosecution in the civil public interest litigation of personal information protection. The focus of the dispute is whether the order of prosecution is the same as that of the other two types of subjects when the procuratorial organs initiate such proceedings, or only if the other two types of subjects do not prosecute? The author believes that the procuratorial organs should be the subject of supplementary prosecution in the civil public interest litigation of personal information protection, ranking the second prosecution. According to the provisions of Article 58 of the Civil Procedure Law and Article 13 of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases, it can be seen that the procuratorial organ can only be the subject of public interest litigation when the organs and organizations prescribed by law do not file public interest litigation. The infringement of personal information is essentially a civil dispute. Therefore, we should follow the positioning of the prosecution order of the procuratorial organs in the Civil Procedure Law, and give full play to the supplementary and safeguard role of the procuratorial

organs in civil public interest litigation. If there is no other subject to prosecute, the procuratorial organs can bring public interest litigation.

#### *4.3 Improve the ‘Consumer Organizations Stipulated by Law’*

The ‘Consumer organizations stipulated by law’ refers to the consumer organization stipulated in the “Consumer Protection Law,” including the Chinese Consumers’ Association and the consumer associations established in provinces, autonomous regions and municipalities directly under the central government. This provision leads to a narrow scope of consumer organizations eligible to file civil public interest litigation for personal information protection, which is also an important reason for the small number of civil public interest litigation cases filed by consumer organizations for personal information protection in practice. The detailed thinking is as follows: First, give other legally established consumer organizations the qualification to file civil public interest litigation for personal information protection. (Fu, 2023) The functional positioning of these organizations to protect the legitimate rights and interests of consumers makes them reasonable as the subject of public interest litigation. The introduction of such subjects has obviously expanded the scope of existing consumer organizations, which is not only conducive to protecting the personal information rights and interests of many consumers, but also helps social forces to participate in social governance. Secondly, by amending the provisions of Article 47 of the ‘Consumer Protection Law’, other levels of consumer associations are given the qualification to sue. The problem of abuse of prosecution that may be caused by broadening the scope of the subject of prosecution can be solved by strict prosecution conditions.

#### *4.4 Clarify ‘the Organization Determined by the National Network Information Department’*

To clarify the subject of such litigation, it is necessary to solve two problems: what subject to determine and what organization to determine. Regarding the first question, that is, who has the right to determine, the author believes that the ‘national network information department’ should refer to the national network information department, only referring to the ‘National Internet Information Office of the People’s Republic of China’, and the scope should not be expanded. There are many social organizations in China, and their qualifications and abilities are not good. If the right of determination of the national network and information department is cancelled, more social organizations will indeed file public interest litigation for personal information protection, but abuse of litigation and false litigation are also inevitable. In this case, it is not conducive to the fight against infringement, but also to the protection of the personal information rights and interests of many infringers. It is also not appropriate to expand the interpretation of the “national network information department”. Considering the extensive and cross-regional nature of many personal information infringements, as well as the establishment of an administrative supervision pattern dominated by the “national network information department,” it should be strictly limited.

Regarding the second question, we can refer to the existing legal practice. Referring to the provisions of Article 58 of China’s “Environmental Protection Law” and relevant extraterritorial norms, the organization determined by the “national network information department” should meet the following

conditions: it should be a non-profit personal information protection organization registered by the civil affairs department of the people's government at or above the municipal level in the district according to law and specialize in the protection of personal information rights and interests. There is no illegal record for more than five consecutive years. The determined procedures can be divided into two types: application-audit system and suggestion-negotiation system. The application-audit system refers to the application made by social organizations to the national network information department, and the national network information department reviews it according to the standards to determine whether it can be included in the scope of the subject of prosecution; the suggestion-negotiation system refers to the proposal of the national network communication department to actively propose the scope of social organizations included in the subject of litigation, and the qualification of the subject of prosecution is determined with the consent of the social organization. The national network information department should strengthen the guidance and supervision of these organizations. If the listed organizations fail to perform their duties of filing civil public interest litigation for personal information protection or have illegal acts, the national network information department should order them to withdraw from the scope of the subject of prosecution, and select other eligible organizations to ensure that the role of social organizations in filing civil public interest litigation for personal information protection is implemented. (Tian, 2022)

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### **References**

- Fu, X. G. (2023). On the subject of prosecution in civil public interest litigation of personal information protection-and on the shortcomings and perfection of Article 70 of the Personal Information Protection Law. *Hebei Law*, 41(2), 47-63.
- Huang, Z. Q. (2023). Obstacles and relief of the exercise of the subject function of public interest litigation for personal information protection. *Jiangnan Forum*, 11, 49-53
- Tian, H. X. (2022). Research on the concept and implementation of civil public interest litigation for personal information protection. *Time Law*, 20(5), 79-90.
- Wang, Y. L. (2023). Practice review and approach optimization of civil public interest litigation for personal information protection. *Shanxi University*.
- Yang, Y. N. (2024). On the scope and order of the subject of civil public interest litigation for personal information protection. *Zhongzhou Journal*, 1, 63-71.



Zhang, R., & Shu, Y. Z. (2022). Semantic analysis of public interest litigation clauses for personal information protection. *Journal of Zhejiang Ocean University (Humanities Science Edition)*, 39(3), 43-49.