

A Study on the Role of Supervisory Functions of the Procuratorial Organs in Consumer Public Interest Litigation

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Abstract: This paper explores the role of supervisory functions of procuratorial organs in consumer public interest litigation to safeguard consumers' legal rights and promote social fairness and justice. The significance of consumer public interest litigation lies in its collective lawsuit approach to protecting consumers' legal rights, resolving mass disputes, and safeguarding social order and public interests. As a judicial authority, procuratorial organs possess special supervisory functions in consumer public interest litigation, including case supervision and guidance, evidence collection and investigation, compliance supervision and accountability. The participation of procuratorial organs can balance the interests of consumers and businesses, improve the efficiency of public interest litigation, and strengthen legal supervision and social governance. With their support and protection, we can better protect the legitimate rights and interests of consumers and promote the realization of social fairness and justice.

1. Introduction

Consumer public interest protection has become increasingly important in current economic and social development. Under the influence of the pandemic, certain actions that infringe upon consumer rights have emerged, such as the sale of substandard masks and counterfeit goods. These behaviors pose a serious threat to people's health and disrupt market order. Therefore, in order to punish these unlawful acts, protect consumers' legitimate rights, and prevent the recurrence of similar violations, civil public interest protection in consumer affairs has become a globally recognized issue.

By studying and improving the status of procuratorial organs in initiating consumer public interest litigation, and strengthening the protection of public interests in the consumer field, we can timely resolve collective disputes in the economic and social spheres. This will empower procuratorial organs, highlighting the legal and social value of initiating consumer public interest litigation. In other words, we need to strengthen the consumer public interest protection system to safeguard consumer rights and maintain social fairness and order.

2. Comparative Analysis of the Supervisory Functions of Procuratorial Organs in Consumer Public Interest Litigation

2.1 Legislative Provisions on the Supervisory Functions of Procuratorial Organs in Consumer Public Interest Litigation

The development of the consumer public interest litigation system in China has been through a challenging process, initially characterized by inadequate legislation and a lack of judicial support. Eventually, it was officially incorporated into the legal framework. However, there still exists a significant knowledge gap regarding the content of the consumer public interest litigation system, necessitating comprehensive enrichment of its legal provisions to enable the system to fulfill its role effectively. At present, the consumer public interest litigation system is primarily defined in two specific laws [1].

2.1.1 Provisions on Consumer Public Interest Litigation in the Civil Procedure Law

The Civil Procedure Law amended in 2012, Article 55 of which stipulates that the consumer public interest litigation system has a clear legal reference. However, this provision has a strong generality, and it is very vague in terms of the eligible subject of litigation. Moreover, this provision makes it impossible for citizens to conduct public interest litigation in the name of individuals. This paper argues that the consumer public interest litigation system outlined in the Civil Procedure Law is comparatively vague and requires further refinement. The legal protections provided by the current system are insufficient, leading to a lack of operability in judicial practice. For example, when judicial organs and relevant organizations fail to perform their duties, most consumers are unable to initiate group lawsuits themselves, which will lead to consumers being unable to safeguard their legitimate rights and interests, and thus violate the original intention of the establishment of the consumer public interest litigation system.

2.1.2 Provisions on Consumer Public Interest Litigation in the Consumer Rights and Interests Protection Law

Article 47 of the Consumer Rights and Interests Protection Law, which was officially implemented on March 15, 2014, grants the right to initiate lawsuits to the China Consumers' Association and provincial-level consumer associations. The enactment of this provision signifies further improvement and recognition of the consumer public interest litigation system and its application in judicial practice. However, from another perspective, it also reflects the current limited use of the consumer public interest litigation system. While the scope of litigants for public interest litigation has been expanded to include certain consumer associations, it remains restricted. This limitation, while serving to control abusive litigation to some extent, hampers the full functionality of consumer public interest litigation and may result in some harm to consumer interests. Therefore, this paper suggests that the content of consumer public interest litigation in the future amendments of the Consumer Rights and Interests Protection Law needs further clarification and the expansion of alternative avenues for relief [2-3].

2.2 Analysis of the Role and Advantages of Supervisory Functions of Procuratorial Organs in Consumer Public Interest Litigation

2.2.1 Role of Procuratorial Organs in Consumer Public Interest Litigation

According to Article 13 of the Judicial Interpretation of the Two High Levels, prior to initiating

consumer public interest lawsuits, procuratorial organs are required to conduct pre-trial procedures. The pre-litigation procedure entails a series of preliminary actions where the procuratorial organ urges and notifies through public announcements before directly filing a lawsuit with the court. These pre-proceedings are established to respect the priority rights of other eligible parties and monitor those who do not actively pursue legal action. By performing pre-litigation procedures, procuratorial organs prompt consumer organizations to fulfill their legal obligations in a timely manner, which also falls within their scope of legal supervision. Until December 6, 2019, the Supreme People's Procuratorate and the Supreme People's Court issued a reply titled "Regarding Whether Procuratorial Organs Should Follow Pre-litigation Announcement Procedures in Filing Criminal-Related Civil Public Interest Litigation". This reply clearly stipulates that when procuratorial organs initiate criminal-related civil public interest litigation, they are also required to follow pre-litigation announcement procedures. The main objective of this reply is to further enhance the supervisory role played by procuratorial organs over consumer associations' execution of consumer public interest litigation [4].

2.2.2 The Auxiliary Role of Prosecutorial Authorities

The Civil Procedure Law truly stipulates that consumer associations can initiate consumer public interest litigation which can be supported by the procuratorial organs. It reflects the important auxiliary role played by the procuratorial organs in consumer public interest litigation. Specifically, once the consumer associations initiate consumer public interest litigation, the procuratorial organs can only choose to withdraw from the litigation or participate in the litigation by supporting the prosecution to provide legal assistance to consumer associations in litigation actions. Because consumer public interest litigation often involves a large number of people and a wide range of scope, it is difficult to obtain evidence, and the litigation ability of the consumer association is generally limited, so the consumer association can apply to the prosecutor's office in the lawsuit to support the prosecution. In this case, the procuratorial organs can support and help the litigation activities of the consumer association by providing legal advice, assisting in investigation and evidence collection, attending the court, etc., so that the consumer association and the procuratorial organs can form cooperation to jointly protect the public interest rights and interests of consumers.

2.2.3 Complementarity of Procuratorial Organs

According to the regulations, if the prosecutorial organs urge the consumer association to initiate consumer public interest litigation but the association fails to take actions, the prosecutorial organs can independently initiate consumer public interest litigation when no other eligible entity is able to address the issue. This is a supplementary measure to ensure social public interests and reflects the prosecutorial authorities' fulfillment of their duties in necessary circumstances. This complementary role is both due to the modesty of the prosecutorial organs, avoiding excessive involvement of public power in private rights disputes, and in line with the legislative intent. In addition, as an organization closely connected to consumers, consumer associations have the ability to obtain case clues at an earlier stage, and therefore should have priority in exercising public interest litigation rights. On the other hand, the procuratorial organs are also responsible for other criminal proceedings and other duties, so it is not appropriate to focus too much energy on public interest litigation. The complementary role of procuratorial organs determines their role in scientific and reasonable saving of judicial resources, helps to coordinate the division of functions and responsibilities among various organs and departments, and promotes the smooth development of public interest litigation [5].

2.3 The Role and Advantages of Procuratorial Organs in Consumer Public Interest Litigation

2.3.1 The Capability to Initiate Public Interest Litigation Directly.

At the municipal level, prosecutorial organs have the capability to initiate consumer public interest litigation directly. At the county district level, they have the authority to initiate criminal incidental civil public interest litigation, which can facilitate the investigation, evidence collection, and proceeding of litigation activities.

2.3.2 The Professionalism

Procuratorial organs with professional legal quality have litigation ability and advantages in investing and collecting evidence. They can strengthen coordination and cohesion with other departments through different means, and urge administrative organs to perform their duties according to law by the supervision to safeguard public interests more effectively.

2.3.3 Have independence

In the Third Plenum of the 18th Central Committee of the Communist Party of China, the Decision on Major Issues Concerning Comprehensively Deepening Reforms (refers to the Decision) was adopted, which emphasized the deepening of judicial system reform. The Decision pointed out that future reforms should be carried out in the judicial management system to promote the unified management of personnel, finances, and assets of courts and procuratorates at the level of provinces and below. Specifically, prosecutors need to be nominated and managed by provincial authorities, following the prescribed procedures for appointment and dismissal. The funding of procuratorates should be unified and managed by provincial financial departments. When a consumer association neglects its statutory duties to protect the legitimate rights of consumers, existing laws do not provide a means to rectify the situation through compulsory measures by the courts. Therefore, when the prosecutorial organs complete the pre-procedural requirements to prompt the consumer association to fulfill its statutory obligations, and the consumer association still fails to fulfill its duties, the prosecutorial organs can initiate consumer public interest litigation in their own name. This serves as a remedy for the negligence of the consumer association and ensures the timely protection of public interests in the field of consumer affairs [6-7].

3. Expanding the Scope of Prosecutorial Claims in Consumer Public Interest Litigation

3.1 Scoping Consumer Public Interest Litigation Cases Initiated by Prosecutorial Organs

3.1.1 Legal and Regulatory Provisions

Currently, in China, the legislation for consumer public interest litigation adopts different approaches in determining the scope of cases accepted. For prosecutorial organs, the scope of consumer public interest litigation is determined through a combination of "enumeration" and "generalization." The enumeration includes only the field of food and drug safety, while the generalization refers to actions that infringe upon the legitimate rights and interests of numerous consumers. This legal concept is quite broad, making it difficult to specify its scope exactly. The types of cases in the consumer field are highly diverse, and apart from food and drug safety, it remains unclear in legislation whether prosecutorial organs can initiate consumer public interest litigation for infringements in other consumer sectors.

3.1.2 Current Judicial Practice

There is some ambiguity in the scope of accepting cases of consumer public interest litigation in China, and in the actual operation process, it mainly focuses on cases in the field of food and drug safety, such as the production and sale of food that does not meet safety standards, toxic and harmful food and fake drugs.

Some other cases that are supposed to be public interest litigation may be difficult to accept due to the lack of explicit regulations. In general, although there is a certain ambiguity in the scope of cases accepted by consumer public interest litigation, there have been some innovations and breakthroughs in practice for cases in other fields. The acceptance of these cases provides more options for consumer rights protection and plays a supervisory role in the relevant industries [8].

3.1.3 Current Judicial Practices

The scope of accepted cases in consumer public interest litigation in China is somewhat ambiguous, and in practical operation, it primarily focuses on cases related to food and drug safety. These may include the production and sale of unsafe food, toxic and harmful food products, and counterfeit drugs, among others. Some other cases that should qualify as public interest litigation may be difficult to accept due to a lack of explicit provisions. Overall, although there is some ambiguity in the scope of accepted cases in consumer public interest litigation, there have been innovative approaches and breakthroughs in practice concerning cases in other fields. The acceptance of these cases provides consumers with more options for safeguarding their rights and serves as a supervisory role over relevant industries [9].

3.1.4 Narrow Range of Accepted Cases

With the development of society and the economy, there is a trend towards diversification, leading to the emergence of new types of consumer public interest infringement cases. Unlawful actions in consumer sectors other than food and drug safety also pose a threat to the legitimate rights and interests of unspecified consumers. Currently, the types of cases that prosecutorial organs can initiate consumer public interest litigation are clearly too narrow to meet the increasingly diverse needs for safeguarding rights. This limitation prevents prosecutorial authorities from fully exercising their function of protecting consumer public interests. The scope of cases determines the supervisory intensity of prosecutorial organs and determines to what extent consumer public interest can be protected through judicial oversight [10].

Taking the example of Ningde City in Fujian Province, in the first half of 2020, the local procuratorial organs filed a total of 120 public interest litigation cases, of which 79 cases (65.83%) were related to ecological environment and resource protection, and 17 cases (14.17%) involved food and drug safety. According to the search on the FaXin-China Law Application Digital Network Service Platform, from January 2012 to February 2021, Chinese courts accepted a total of 9,758 first-instance civil public interest litigation and criminal incidental civil public interest litigation cases nationwide. Among them, 5,650 cases (57.9%) were related to ecological environment, and 2,696 cases (27.6%) were related to public interest litigation in consumer fields such as food and drug safety. The number of public interest litigation cases in the ecological environment field is more than twice that in the consumer field. The quantity of consumer public interest litigation cases is much lower than that of environmental public interest litigation cases. The main reason for this is that the prosecutorial organs' rights to initiate public interest litigation is limited to cases in the "food and drug safety" field, forcing them to focus more on initiating environmental public interest litigation [11].

3.2 The Significance of Prosecutorial Organs Initiating Damage Compensation Claims in Consumer Public Interest Litigation

Although consumer rights are protected in laws such as the Consumer Protection Law, Food Safety Law, and Tort Liability Law, which also stipulate punitive damages, these laws focus solely on the claims and compensation for individual consumers. When individuals file lawsuits seeking punitive damages, the multiple of compensation may have some deterrent effect. However, compared to the enormous illegal gains obtained by wrongdoers, this compensation may seem insignificant. Therefore, individuals filing lawsuits seeking punitive damages may not effectively deter illegal behavior but rather encourage victims to file lawsuits to protect public interests. In summary, considering the nature, function, legal logic, and policy orientation of punitive damages, it is necessary for prosecutorial organs to initiate claims for damage compensation in consumer public interest litigation, especially in asserting punitive damages. These statements have similar meanings but discuss the same content [12].

4. Conclusion

In the current legislation of China, the system of prosecutorial organs initiating consumer public interest litigation has been established. However, there are some imperfections in this system in practice, which raise doubts about the role and function of prosecutorial organs. Nevertheless, global trends indicate that the system of prosecutorial public interest litigation is an important measure for public interest protection and aligns with the needs of public interest protection in China. Therefore, it is an urgent issue to establish the status of prosecutorial organs in initiating public interest litigation and address current challenges in this area.

With the continuous development of market economy, the diversification of consumer disputes and the increase of group consumer disputes, the consumer public interest litigation system needs to be improved. In my opinion, the factors that determine the status of procuratorial organs in consuming public interest litigation mainly include three aspects: the relationship between procuratorial organs and consumer organizations, the scope of accepting cases and the scope of litigation requests. Procuratorial organs shall cooperate with consumer organizations by giving priority to consumer organizations to bring consumer public interest litigation opportunities, and supervise the performance of consumer organizations. However, due to the limited capacity of consumer organizations, there may be cases of negligence in performing their duties, at which time the prosecution needs to play a complementary role to protect and safeguard the rights and interests of consumers. In order to better protect the purpose of public interest and improve judicial efficiency, I believe that procuratorial organs should allow them to directly file incidental litigation when they file criminal incidental civil public interest litigation, without having to perform the procedure of pre-litigation announcement. In addition, it is also necessary to analyze and study the scope of procuratorial organs to bring consumer public interest litigation, and expand its scope of application. Finally, it is necessary to analyze the feasibility of prosecuting organs to file damages in consumer public interest litigation, and make suggestions on the calculation and distribution of punitive damages.

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