ISSN: 2688-9323

The Feasibility Study of Expanding the Scope of Administrative Public Interest Litigation Acceptance of Cases

Cunlin Yan*

School of Intellectual Property, Nanjing University of Science and Technology, Nanjing 210094, China

*2235926240@qq.com

Abstract

On how to define the scope of administrative public interest litigation since the revision of the administrative Procedure Law has been maintained a hot discussion, from the beginning of the debate on legislation "within" and "outside" to the present basic to expand the scope of the consensus, go a long way. For administrative litigation accepting cases scope of judicial practice, is mainly through the case list of court typed filing processing, data show that the current administrative public interest litigation accepting cases scope is still mainly stay in the ecological environment and resources protection, food and drug safety, state-owned property protection, state-owned land use rights, etc, accepting cases scope to break the legislative restrictions, but few, but without clear legislation still exist other types of accepting cases. For the litigation subject, litigation basis and a series of analysis and discussion, it can be concluded that the current based on the existing need to more clear legal status of procuratorial organs and the concept of "public interest" in the context of administrative public interest litigation, on the basis of the conclusion of the empirical analysis as the future direction, so as to expand the scope of accepting cases to achieve the purpose of the system.

Keywords

Administrative Public Interest Litigation; Scope of Acceptance; Public Interest.

1. Introduction

On December 27,2023, the CPC Central Committee and The State Council issued the Opinions of the CPC Central Committee and The State Council on Comprehensively Promoting the Construction of a Beautiful China, which required "improving public interest litigation and strengthening judicial protection in the field of ecological environment". The scope of administrative public interest litigation is an unavoidable and very important topic in discussing administrative public interest litigation. As far as the scope of accepting cases is concerned, due to the particularity of the subject of administrative power, the provisions of both China and other legal countries are relatively narrow. Article 25 of paragraph 4 of the Administrative Procedure Law of the People's Republic of China defines the four scope of administrative public interest litigation, but the legislation does not limit the scope of administrative public interest litigation to the four contents, but uses "waiting" to cover the bottom. It can be said that the scope of administrative public interest litigation in China has adopted the list plus the bottom clause, which is a relatively proper and not easy to make mistakes legislative mode in the legal system. However, the explicit enumeration in this clause cannot properly balance the interest relationship involved in the administrative public interest litigation, nor can it fully realize the purpose of protection and public interest. Looking at the world, no matter what the legal system is, the general trend in the scope of administrative public interest litigation is to further expand it. Whether the current judicial practice in China

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reflects the possibility of expanding the scope of accepting cases and how to optimize the system on the basis of Chinese national conditions is the main problem that the author wants to discuss.

2. Current Situation Inspection: Legislative and Judicial Sorting of the Scope of Administrative Public Interest Litigation

2.1. Legislative Sorting of the Scope of Administrative Public Interest Litigation

2.1.1. Combing of Existing Laws

Chinese administrative public interest litigation has experienced two years of pilot implementation from 2015 to 2017. Article 25 of the revised Administrative Procedure Law promulgated in 2017 marks the beginning of the comprehensive implementation of administrative public interest litigation in China. "Administrative procedure law" paragraph 4 of article 25 of the scope is said when found the ecological environment and resources protection, food and drug safety, state-owned property protection, state-owned land use rights transfer administrative organ not started or started in accordance with the law, makes the public interest is damaged, the people's procuratorate has the right to urge its rite or correct behavior. If they still do not perform their duties according to the law, the procuratorate will file an administrative public interest lawsuit in accordance with the law. According to the meaning of this provision, we can know that the current legislative scope of administrative public interest litigation is only limited to specific areas.

In addition to the Administrative Procedure Law, there are some other fields and laws also involve the scope or areas where cases may be accepted in administrative public interest litigation, which are basically responses to the practical problems that are urgently needed to be solved by the society and have basically reached consensus. The Law on the Protection of Heroes and Martyrs promulgated in 2018 includes acts that damage the names, portraits, reputations and honors of heroes into the scope of harming public interests; The Law on the Protection of Minors revised in 2020 stipulates that if minors fail to perform their duties or according to the law, Public interest litigation may be brought in accordance with the Administrative Procedure Law, From another perspective, it can be considered to cover the administrative public interest litigation in the field of minor protection; The Law on the Status and Protection of Rights and Interests of Soldiers in 2021 also clearly believes that the legitimate rights and interests of servicemen can also seek the scope of public interest interests relief when they are infringed; The Work Safety Law revised in 2021, the Personal Information Protection Law promulgated in 2021, and the Anti-Telecommunications Network Fraud Law implemented in 2022 also stipulate that in the field of work safety, the field of personal information protection and the field of anti-telecommunications fraud, Public interest litigation can be applied to undertake the right relief and so on.

The 2020 Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of the Law to Procuratorial Public Interest Litigation Cases confirms the four types mentioned in the Administrative Procedure Law and the scope of the acceptance of cases, Consistent with its statement; The Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Law to the Trial of Mining Rights Dispute Cases specifies that the environmental pollution or ecological damage caused in the process of mineral resources mining also belongs to the scope of administrative public interest litigation, In essence, it is still a subdivision of the ecological environment and resource protection fields in the Administrative Procedure Law, It did not break through the original four large areas. In addition, the Provisions of the Supreme People's Court on Several Issues concerning Internet Court Hearing Cases and other judicial

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interpretations have provided for some specific provisions on the scope of public interest litigation.

2.1.2. Summary of the Current Legislative Status Quo

From the perspective of legislation, Chinese legal system is actually actively responding to the increasing demand for public interest litigation, and the main ways are to revise the current laws, promulgate judicial interpretations or implement laws in emerging fields. Although the legal and judicial interpretation has many mentioned belong to the new type of public interest litigation, but it is difficult to clearly define it as belongs to the scope of administrative public interest litigation, may also be in the reality event under the scope of civil public interest litigation, still depends on the actual case type and the subject involved.

In general, according to the previous for the legislative practice, can draw a preliminary conclusion that the scope of administrative public interest litigation, the current legislative system tends to take to the administrative procedure law lists the main scope, the single protection law listed supplementary scope form, can say "etc" word is to the subsequent law to fill a certain space.

2.2. Scope of Accepting Administrative Public Interest Litigation in Judicial Practice

The author uses the method of empirical analysis, and limits the key words of "administrative public interest litigation" and "first instance procedure" on the magic weapon of Peking University, and limits the closing time from 2018 to 2022, in order to observe the reality of judicial practice in recent years. In addition to the overlapping cases and the withdrawal of litigation before the court session, a total of 45 relevant cases were obtained. The scope of administrative public interest litigation in these cases is summarized as shown in Figure 1 below.

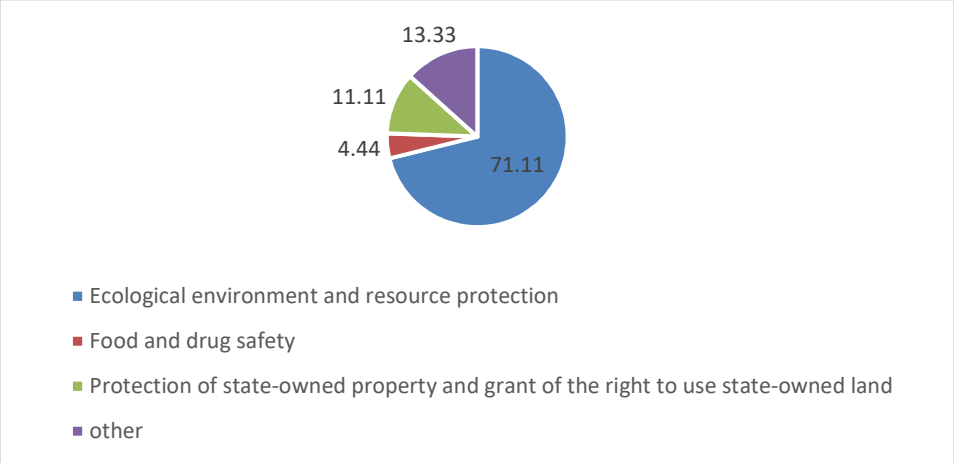

Figure 1. Analysis of the results of the case range

It is not difficult to see from figure 1 in recent years administrative public interest litigation scope of general or four areas stipulated in the administrative procedure law, the ecological environment and resources protection, food and drug safety, state-owned property protection and state-owned land use right transfer, plus a few other areas such as the production safety, vulnerable groups protection, urban and rural planning, road traffic safety, and so on. Among them, ecological environment and resource protection account for more than 70% of administrative public interest litigation cases, accounting for the vast majority of the reasons for accepting administrative public interest litigation, indicating that in the cases involved in administrative public interest litigation, the illegal phenomenon of administrative organs

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related to environmental damage and ecological damage is more significant. The protection of state-owned property and the transfer of state-owned land use rights account for about 11.11% of the total number of cases. These two types of cases usually have the characteristics of small number and large influence. The number of administrative public interest litigation cases in the field of food and drug safety accounts for 4.44% of the total number of cases. Judicial practice proves that the inclusion in the scope of administrative public interest litigation after the revision in 2017 does respond to the practical needs. In summary, the cases in the scope of accepting cases have some common characteristics: first, it is related to the property interests of the majority, life safety and health of the state; second, the majority is based on the failure of administrative organs, active or illegal performance of duties; third, the damaged interests are in a continuously damaged or unstable state before being involved by administrative public interest litigation, and even lead to the continuous expansion of damage in the future.

Can be seen from the above data, in the current judicial practice, the administrative public interest litigation cases scope presents a trend of expanding, the court also accept the case within its ability as far as possible to respond to the trend of The Times and the voice of the people, from the perspective of protecting the public interests, for the scope of administrative public interest litigation cases constantly actual broadening, can expand the scope of administrative public interest litigation cases is to the situation.

3. Tracing Back to the Source: Factors Affecting the Scope of Administrative Public Interest Litigation

3.1. The Subject Status of Litigation Shapes the Scope of Accepting Cases

The rapid development of today's society and the rapid emergence of new things have put forward higher requirements and expectations for the administrative intervention of administrative organs, and the administrative power is obviously enhanced in the scope and content. Administrative public interest litigation is mainly aimed at the failure to perform the administrative act and not to perform the administrative act according to law, and the scope of the case is also formed in the power game between the original and the defendant. At present, China is the only subject of monism, that is, only recognizes that the procuratorial organ has the plaintiff qualification of administrative public interest litigation, but it is not easy to supervise and control the relatively strong administrative power with the existing procuratorial power. Starting from the administrative public interest litigation itself, since the confrontation and contend between them, so it is necessary to make clear as the subject of the procuratorial organs, what should tube what should not tube, what can tube what can not tube, clear what are the administrative organ responsibility, these will fundamentally shape the size of the scope and boundary.

First of all, from the perspective of identity, from the surface characteristics of the procuratorial organs' participation in administrative public interest litigation, the procuratorial organ has the dual identity of the public interest litigation plaintiff and the trial supervision organ. How to define the legal status of the procuratorial organ in the administrative public interest litigation? There are different opinions in the administrative law circle, among which the representative views include "the plaintiff", "public welfare representative", "legal supervision", "administrative prosecutor" and "double status" and so on. At present, Chinese legal system defines the procuratorial organ as a "public interest litigant", but in reality, different positions distinguish the interpretation of this concept. As for the different cognition of the identity of the procuratorate, the distribution of rights and obligations between the original defendants is naturally different. In China, the courts and administrative organs are relatively more inclined to the identity of the plaintiff, while the procuratorial organs are generally more inclined to the identity of public interest litigants. Moreover, as the sole initiator of public interest litigation,

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the procuratorial organ must bear certain burden of proof, which some scholars summarize as five points: first, the field complies with the relevant legal provisions; second, the object is the administrative organ with obligations and responsibilities; third, there is the administrative organ that does not perform its duties or duties according to law; fourth, it exists or the public interest has been damaged; fifth, the procuratorial suggestion has been made before and served. All the above put forward great requirements for the case handling ability, professional quality and number of personnel and case handling time of procuratorial organs. In the current state of procuratorial practice in China, there has been a phenomenon of "emphasizing the criminal and neglecting the civil action" for a long time, and the civil procuratorial work is the weakness of procuratorial work and the field neglected for a long time. This will limit the actual development of the scope of accepting cases, that is, theoretically even if the scope of accepting cases expands thousands of times, whether the reality can keep up with the problem.

At present, the academic community has not formed a relatively unified conclusion on the positioning of the procuratorial organ in administrative public interest litigation, so it requires some detailed explanation in the following article. Only by confirming the legal positioning of the special parties can we better grasp the boundary of the scope of accepted cases in a sense. However, it is certain that under the background of the current reform of the procuratorial system, the nature of legal supervision and constitutional positioning will only be strengthened, and the strengthening of its subject orientation will inevitably make the trend to expand the scope of public interest litigation.

3.2. The Objective Litigation Basis Affects the Scope of the Accepted Cases

The concept of objective litigation was first put forward in Leon Di Ji's social joint law. He first divided the types of administrative litigation into subjective litigation and objective litigation, among which incorporated the universally applicable rules and legal cognition of administrative acts into the objective litigation. The reason for the beginning of administrative public interest litigation is to maintain the "public welfare" from the perspective of the whole society, so as to ensure the overall order and safety of the society. It can be seen that the basis of the existence of administrative public interest litigation itself belongs to the category of objective litigation, which is irrefutable.

Chinese administrative public interest litigation also has the above characteristics, which is different from the general administrative litigation at the beginning of its establishment. From the beginning, it has the characteristics of objective litigation, which is mainly reflected in: first, the protection of public interests as the core and has the function of maintaining the unity of the legal system. The second is the typical form of official prosecution. As mentioned above, the procuratorial organ is the only subject with the plaintiff qualification, representing the public interests of the state and the society rather than itself. In addition, it also has the coercive force and supervision power that other subjects do not have. Some scholars also verify through empirical analysis that administrative public interest litigation in China is based on the logic of objective litigation, so it has the characteristics of objective litigation and plays an objective effect of maintaining the legal order both inside and outside the litigation cases. So as a part of the administrative public interest litigation system of accepting the scope of nature also cannot escape the influence of the objective litigation of this basis, deviate from the objective nature of the nature of the scope of how to expand cannot include, this is set up the basis of the original, this means that although from the actual need and subject orientation of administrative public interest litigation of accepting the scope is able to be expanded, but from the legal point of view of the development is not blind, is still need to meet the requirements of the public interests for the big premise.

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3.3. Purpose of Litigation Determines the Scope of Accepting Cases

As Bodenheimer said, " The end is the creator of all the law." For any legal system, it must be produced with some kind or some purpose, so the importance of the purpose itself is self-evident. Administrative public interest litigation is "the act of administrative organs illegally exercising their functions and powers in a specific field and infringing on the national interests or social public interests". Therefore, it can be concluded that the primary purpose of establishing the administrative public interest system is to protect the public interests. In judicial practice, the burden of proof of the procuratorial organs must also be clear is related to the public interest, and public welfare is the original intention and return of the administrative public interest litigation system, which is also the soul of the existence of the administrative public interest litigation system.

"The judgment of public interest runs through the whole process of procuratorial public interest litigation, and is the core problem faced by theory and practice". From the practical judicial practice, the case of administrative public interest litigation is sometimes not a specific administrative act, and even the specific counterpart may not be damaged at all, and it is difficult to be identified as whose rights and obligations. So should it be included in the administrative public interest litigation? It is mainly to identify whether it has caused substantial harm to the public interest, which is central to it. The specific judgment is divided into the following levels: First, to judge what is the public interest? This is the difficulty, it is not a definite concept, highly abstract and ambiguous, usually to measure it comprehensively, and then list some important factors with certainty. Any rights and interests should be bounded, and no public interest, and the second is how to determine that the public interest is indeed damaged? This is the top priority in the protection of public interests, and also the difficulty in confirming the scope of administrative public interest litigation. Thirdly, how to determine whether the public interest has been effectively compensated or protected in the relief ? Some scholars believe that administrative public interest litigation is born to safeguard the public interest, but now whether Bentham "personal sum", Bodenheimer "boundaries" or the "order", are still can't get rid of the public interest itself is an extremely simple, generalization and nothingness concept, so the theory is difficult to define in reality. At present, the public interest can exist as independent form is not conclusive, overall or from the social objective situation to determine and measure, with the rapid development of society, objectively will produce new interests need, as the people of the 20th century understand and need of public interest and today will not completely overlap, this can also in public interest litigation in the scope of the scope of other types of public interest scope to some extent, is inevitable to bring the scope of administrative public interest litigation.

To sum up, it is feasible to expand the scope of administrative public interest litigation. Public interest is the value of the legal interest of administrative public interest litigation, and its connotation and extension is the fundamental factor affecting the scope of administrative public interest litigation. Therefore, it is necessary to make a reasonable definition of it. Even if it cannot be defined accurately and comprehensively, it must be detailed to a certain extent. Otherwise, the role of the system may be affected because of the unclear definition, and even lose the case that clearly damages the public welfare. In order to determine how the scope of administrative public interest litigation should evolve in the future, from the perspective of legal principle, it cannot bypass the understanding of the public interest. If it is not solved, it may even affect the healthy operation and sustainable development of the whole system.

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4. Practical Solution: Optimize the Institutional Structure of the Scope of Administrative Public Interest Litigation

4.1. Clarify the Legal Position of the Procuratorial Organs

As the legal subject of administrative public interest litigation, the procuratorial organ has a fundamental impact on the procedural promotion of administrative public interest litigation. Different subjects' different understanding of its positioning will lead to some differences in the application of procedural rules in practice. The subject of litigation will inevitably affect the scope of the cases, so the construction of the scope of administrative public interest litigation is to determine the reasonable orientation of the procuratorial organ in the system.

There are many relevant theories, and all of the ones mentioned above have their own legal support. As for the legal supervision, the reason for its establishment is that the procuratorial organ is the legal supervision organ recognized by the Constitution, so it has the legal supervision power in the general sense. But if it directly becomes a legal supervision authority, it is equivalent to having the legal supervision power in all its senses, On the one hand, it may cause the unclear connotation of the supervision power, On the other hand, it may also make the legal supervision power of the procuratorial organs expand indefinitely; With respect to the plaintiff said, Based on the belief that the procuratorial organ has replaced the ordinary subject qualification of the plaintiff in the administrative public interest litigation, So there is no doubt about it as a plaintiff, But the doctrine ignores the gap between the power of the prosecution and the general plaintiff, the gap between the rights, It is difficult to confirm the correct positioning of the procuratorial organ in the administrative public interest litigation; Regarding the representative of the public welfare, The idea of the theory is the embodiment of the public interest since the birth of the prosecution. However, in the field of administrative public interest litigation, the administrative office is against the public interest. However, the theory ignores the principle of judicial independence.

The author is more sure the theory of "administrative prosecutor", as the Peking University law school professor said, the law defines the concept of "public interest litigants" and "administrative prosecutor said" more appropriate, because it reflects the procuratorate as a extension of traditional prosecution public prosecutor, and similar is represents the public welfare. At the same time, the procuratorial organ is different from the general plaintiff when participating in public interest litigation, and its strength is stronger than the general individuals or organizations. It not only needs to supervise the administrative activities of the administrative organs, but also needs to supervise the judicial organs according to law. Specific support reasons are as follows: the nature of the administrative public interest litigation is objective public prosecution, and the corresponding should be the public prosecutor identity and the general administrative litigation plaintiff some different rights and obligations, according to the identity of the prosecutor, from the public prosecutor also requires the legal supervision responsibility also increased the burden of proof, to better balance it might have contradictions, which makes the litigation structure does not change at the same time also can fit its constitutional positioning.

4.2. Clarify the Judgment Mechanism of Public Interest from a Legal Perspective

Public interest is a constantly developing concept. It has different requirements and expression forms in different times, different social forms and different scenarios. Even if it is simply defined from a legal perspective, different fields are also different. The author tries to define the operability of administrative public interest litigation from the special context.

First of all, it is defined from the basic concept. Generally speaking, the public interest includes both the national interest and social public interest, and the judgment is mainly made between

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the two. As for national interests, some scholars believe that from a legal perspective, the real national interests only exist in the interests of state power, state sovereign interests and state property ownership, and the rest do not belong to national interests. In the context of administrative public interest litigation, it can be believed that the stability of state power, sovereign stability and property interests belong to the public interest from the perspective of administrative public interest litigation, and its infringement is about equal to the destruction of administrative public interest. However, starting from Chinese current national conditions, no matter the purpose of legislation itself and the needs of practice, sovereignty and political power stability are often regulated by criminal law, and will not require administrative public interest litigation to meet the degree and requirements. Therefore, based on the reality of Chinese own, it should be restricted under the view of the scholar, which is mainly understood as the state property ownership of the scholar, and this property ownership is not only real benefits such as money and resources, but also includes intangible property, cultural property and so on. As for the social public interest, it is usually defined as the interest of an unspecified majority in a society, which will overlap with the national interest to a certain extent, and sometimes it will be seen as a narrow public interest. Some scholars believe that the public interest is the combination of individual interests, and the individual interest is a part of the public interest. There is no public interest separated from the private interests. From the legal point of view, it is the wish of the public for their own interests based on social and economic development. The subjects that benefit in social welfare can be divided into the collection of majority individual interests and the common interests of the majority. The first category can usually be solved through class action litigation, and the second category is generally the objects mentioned in our administrative public interest litigation. Therefore, at the present stage, starting from Chinese national conditions, the social and public interests in administrative public interest litigation should include the life and health safety of the unspecified majority of people, property interests and the stability of social life order, etc. The specific content will change with the change of The Times, but the legitimate interests of the unspecified majority of people should be protected.

Secondly, make the characteristic description of the public interest, because the ambiguity of the public interest and its variability make its certainty and visualization become basically impossible. The specific methods are as follows: one is to make a positive positive description, emphasizing the unspecified number of the majority of the public interest and the nature of the public, and taking the essence as the first step into the public interest; the second is to make a negative negative description, showing the characteristics that do not belong to the public interest, and directly exclude the characteristics that do not belong to the public interest, that is, the so-called "veto". Just like legislation, with certain enumeration, negative enumeration and general description, the public interest should be no longer as visible but invisible as an illusory mist.

Finally, the public interest is determined based on the basic concept of the whole policy direction. Some scholars believe that our country's public interest is a kind of affinity mode that people trust countries can be committed to the well-being and happiness of all the people, the happiness and well-being can be shared by the vast majority of people, it should contain the communist party of China has been the mass consciousness and the top design, the concept of overall leadership. The origin of this idea is that countries that take the socialist road, especially our country, usually require a relatively unified theoretical system and the great ideal of social development, so the public interest must be attached to this idea in this environment. From the current reality of our country, these major policies are specifically carried out and finalized by the legal norms, so as to ensure the relative unity of the implementation of the country.

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4.3. Broaden the Scope of Accepting Cases Needed in Reality

From the perspective of idealism, the scope of administrative public interest litigation should be covered with all the public interests, but from the perspective of reality, the construction of a system can not be done overnight, it is a gradual development process, so can step by step broaden the scope of administrative public interest litigation in reality. Once shows the data can conclude that the current legislation has clear administrative litigation scope covered the types relative to reality need still less, although they see in the data occupy cases are very few, but the reason is probably not show that there is no problem, but the reality of similar problems governance, litigation, from the scope of the first level was screened out, that is why we want to expand the scope of the purpose, the current administrative public interest litigation scope has been difficult to meet the needs of time. However, due to the limited judicial resources and the infinite types of practical problems, the most prominent types of public interest and urgent protection should be included.

The specific understanding of the expansion of the scope of administrative public interest cases is as follows: First, the expanded legislative interpretation of the word "wait" in the Administrative Procedure Law is an unstoppable trend, and it is also what the author agrees with. The current "administrative procedure law" stipulated in the scope of acceptance is in the original pilot during common problems, high areas, and because the public interest litigation system in our country is not long enough, the procuratorial organ energy, limited judicial resources and so on reason has not been expanded, only in the field of individual to make separate specific provisions. However, the authority of the law determines that once it makes provisions, it means that every individual and organization bound by it should abide by it and cannot be restricted or expanded in interpretation at will, otherwise it is a challenge to the law itself, which is more serious than the limitation of the scope of accepting cases. Therefore, if you want to break through the existing regulations and restrictions, it should be solved in the way of legal recognition. The interpretation can be expanded through the legislative interpretation of the NPC Legislative Affairs Committee, determining the connotation of the word "wait", and to some extent, allowing the interpretation to be specific, such as "waiting" as the current law. Also can also be set directly in advance with the development of the specific start program, can both through the authoritative form of the legislation, also can in the highest, the highest law after the review of some emerging field development for accepting type, to ensure that into the administrative public interest litigation accepting scope of case type not only maintain the public interest, also has a reasonable system basis.second, Through the typed data of the scope of administrative public interest litigation in recent years, Can be obtained, Cases that are outside the four categories but have been accepted, In the eyes of the procuratorial organs and the judicial organs concerned, it must be full of typical nature and cannot be ignored, For example, based on the case "Administrative Public Interest Litigation Case of the People's Government of Zhenma Town, Rongjiang County, Guizhou Province" and the case "Administrative Public Interest Litigation Case of the Supervision of the People's Procuratorate of Sui County, Hubei Province", We can focus on the administrative public interest litigation cases in urban and rural planning, Based on the case "Administrative Public Interest Litigation Case of Livestock and Poultry in Yangxin County, Hubei Province," we need to focus on the field of public transportation safety, Based on the case "The Administrative Public Interest Litigation case of the People's Procuratorate of Luodian County, Guizhou Province to urge the Protection of Blind Road Safety for the Disabled" implies that we can focus on the protection of the rights and interests of vulnerable groups, There is already a trend such as the protection of minors. If you want to expand in specific areas, we should give priority to these areas, which are some views obtained from the author's empirical analysis.

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5. Conclusion

Although overall adhering to the recognition to expand the scope of acceptance cases, but still should pay attention to step by step, not too impatient large expansion, should pay attention to grasp the connotation of the public interest, consider good legal system and judicial practice of the procuratorial organs to mobilize the limited manpower and as far as possible not to increase the burden of judicial resources, administrative organs, procuratorial organs and judicial organs can agree as far as possible on the "outside" scope, in order to expand the scope of acceptance cases correctly, safeguard the purpose of the people's rights and interests.

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