

A Brief Analysis of Litigation Interests in Civil Proceedings

Xu Liu

Law School, China Jiliang University, Hangzhou, Zhejiang, China

Abstract: The interest of litigation is a basic theory of civil procedure law, the common law system has a legal proverb "no interest is no right of litigation", which means that in the case of dispute, the parties have the right to seek judicial relief, in order to exclude some meaningless litigation. It is necessary to determine the interest of litigation, that is, the litigation needs to exist interest. The interests of the plaintiff are the necessity and effectiveness of the court to make a judgment on the dispute when the plaintiff's civil rights and interests are infringed or in civil disputes with others. Unlike the right of litigation, which is shared by both parties, the interests of the plaintiff are generally the prerequisite for accepting the litigation. If there is no legal protection of the interests, there is no way to make a substantive judgment, and the litigation should be rejected. Therefore, the interest of the litigation is linked to substantive law and procedural law. At the same time, the interest of the litigation is also related to a series of basic civil litigation issues, such as the boundary of civil approval power, the jurisdiction of civil litigation.

Keywords: Judicial Interests; Civil Action; Jurisdiction; Litigation

1. The Basic Theory of the Interests of Litigation

1.1 Definition of Interest in Litigation

In common law civil litigation, there is no interest theory of litigation, but the "party centered theory" is adopted out of necessity. The plaintiff chooses to resort to litigation, so the necessity of judicial relief is self-evident. In the civil procedure law, the interest of litigation is a very important theoretical concept. The civil law system holds that the starting point of the judge's substantive judgment is the interest of the suit. The interest

of litigation is generally regarded as one of the elements of civil action in many countries. The traditional theory holds that every litigation must satisfy the "need for judicial relief", which is called "right protection interest" in the German legal circle. The French legal circles call it "interest", the Japanese, Portuguese and other legal circles call it "litigation interest", and the Austrian legal circles call it "litigation premise". In the civil procedure law of our country, the concept of interest in litigation is not clearly defined. In theory, interest in litigation can be divided into broad sense and narrow sense. In the broad sense, there are three levels of content: "qualification for right protection", "suitability of parties" and "interest in right protection". "Right protection qualification" refers to what kind of cases the court is qualified to try, that is, the issue of the court's jurisdiction. The so-called "party qualifications" refers to the party wants to become the plaintiff or the defendant, to participate in the process of judicial acceptance of the case must meet certain qualifications, that is, the legal party; "Rights protection interests" refers to whether the plaintiff's litigation request is worthy of court judgment protection in the litigation. Since the civil procedure system of various countries has separately stipulated the "right protection qualification" and "party's eligibility", the concept of "interest in litigation" is only used in a narrow scope in the civil procedure system. As for the definition of the interest in litigation, some scholars believe that the interest in litigation should be some kind of benefit or interest that the parties can obtain through the trial in the litigation. This view obviously only gives an intuitive interpretation of the interest of litigation in the context. However, some other scholars believe that the interest of litigation is the necessity [1] to request the relevant litigation procedure to give relief when one's civil rights and interests are damaged or there is a dispute with others. The so-called necessity refers to the civil procedure

system and corresponding facilities established in any country and society to serve a certain purpose, which cannot be used unconditionally, but must be based on some special needs and necessity of users, that is to say, there is some specific interests [2] recognized by law. Of course, some scholars believe that the interest of litigation is an element set up to judge whether the content of a request has the necessity to become the judgment of the case and whether it can achieve practical effects. This view is more effective on the basis of necessity, that is to say, the court's judgment can effectively resolve the disputes between the original defendants. This view is the prevailing one at present.

1.2 Necessity and Effectiveness of Judgment in Interest of Litigation

The necessity of judgment refers to whether the litigation claims made by the parties need to be resolved by court judgment. For example, the plaintiff files a divorce litigation with the court and the court accepts it, but the plaintiff and the defendant agree to divorce before the court makes a judgment and have completed the corresponding divorce registration procedures. If the plaintiff still petitions the court for judgment, the court should rule to dismiss the litigation on the grounds that it is not in the interest of the litigation. That is because the party has already achieved its claim by other means. There is no need for the court to make a decision. The validity of the judgment means that the judgment made by the court can achieve the effect [3] of resolving the dispute. For example, if a plaintiff asks the court to support his claim for the return of an item, but in fact the item is damaged, lost, and cannot be returned, the court should dismiss the suit because there is no interest in suing. Even if the court orders the defendant to return an item, the defendant can not perform the obligation to return an item to the plaintiff, in fact, the judgment can not solve the litigation disputes between the two parties, that is, the effectiveness of the judgment is lost. The practical meaning of the validity of the judgment is that the court's judgment can effectively resolve the dispute between the plaintiff and the defendant. To sum up, we can say that the existence of interest in litigation can help the court review the case and choose which issues need to be decided by court

judgment and which issues do not need to be decided by trial decision (that is, the court does not accept or reject the litigation claims of the parties).

2. The Nature of the Interest in the Litigation

The interest of an litigation means that the parties' claims are necessary and effective for the court to hear and make a judgment on them, and the court's review of the parties' claims is necessary and effective in order to protect the interests [4] of the parties. Then, another question arises, that is, which party's interest is the court protecting when evaluating the case? Japanese scholars believe that the interest of litigation is to protect the interests of the state because the state, as the ruler of the legal system, should give priority to protecting its own interests. Of course, in assessing the interest of the suit, besides the state, the interests of the participants in the case are also included, and if the case does not meet the necessity and effectiveness of court proceedings (i.e. the interest of no suit) and the court enters the trial stage and makes a judgment without review, the following problems will arise: First, at the national level, because the court takes time and effort and spends a lot of money on unnecessary litigation, it is bound to waste the judicial resources of the country; Second, as far as the defendant is concerned, because the court does not take into account the interests of the litigation, it participates in an unnecessary litigation, resulting in its own losses. Therefore, even if the court supports the plaintiff's litigation request and is recognized by the court, the plaintiff's legitimate rights and interests cannot be truly protected.

2.1 The Nature of the Interest of the Litigation

From the nature of the interest in litigation, although the interest in litigation is a concept of procedural law in the civil law system, it has the dual nature [5] of substantive law and procedural law, and it is related to both substantive law and procedural law. If the plaintiff's claim of rights is only aimed at the substantive law level, it does not mean that the claim can be successfully realized, and it still needs to cooperate with the obligor or related to the case. The prerequisite for the interests of

the litigation to enter the trial stage is that the parties' substantive law claims can be introduced into the proceedings to confirm and make a judgment, which is the linking role[6]of the interests of the litigation; Second, it involves two aspects to determine whether an litigation has an interest. At the level of substantive law, the court needs to consider the claims of the original defendant, but the first thing to examine is whether the litigation has substantive legality. Civil rights not provided for in substantive law do not need to be tried by the court, that is, there is no interest in litigation. At the level of procedural law, even those civil rights claims that meet the provisions of substantive law may lack the interest of litigation because they do not meet the relevant provisions of procedural law. For example, when the amount of the subject matter is too low, the court may consider the cost and benefit of resorting to the court, and deem it unnecessary to resort to the court; For example, if the court rejects the plaintiff's request for divorce, even if it appeals to the court for judgment again, it may refuse to hear the case because it does not meet the relevant provisions of the procedural law such as "new circumstances or new reasons" and "six-month time limit", which are considered unnecessary by the court. These are all considerations of the interests of the litigation from the perspective of the procedural law.

3. Classification of the Interests of Litigation

A litigation for confirmation refers to a litigation in which the plaintiff requests the judicial confirmation of the existence of the right or legal relationship between the parties. Only when the plaintiff's right or legal status is in a state of uncertainty, and between the original and the defendant, the judgment on the existence or non-existence of the right or legal relationship of the subject matter of the suit is an effective and appropriate method to eliminate such uncertainty, the plaintiff has the interest of the litigation for confirmation [7].

A litigation for payment is divided into a suit for payment now and a suit for payment in the future. In the lawsuit for payment now, as the plaintiff claims that he has been in a position to claim payment but has not been paid, so as long as it is a lawsuit for payment now, it has the interest of asking for the judgment of the case. But there are exceptions. If the claim for

payment of a specific thing that no longer exists, there is no interest in the suit. But if the plaintiff does not know before the suit whether the other party can deliver the specific thing or claims the right of subrogation on the basis of the non-existent specific thing, even if the specific thing no longer exists, there is still the interest of the suit.

A litigation for formation refers to a suit in which the plaintiff requests the court to change or eliminate a certain legal status. The prerequisite for filing a suit for formation is that the legal relationship which the court is requested to change has actually existed, and the change of the legal relationship is clearly stipulated by the law.

From the perspective of the function of litigation and the development of the litigation process, the litigation of payment is the normal state of litigation [8], followed by the litigation of formation, and the litigation of confirmation should be the supplement of the litigation function and litigation state. However, at present, due to the differences in theoretical understanding of the litigation of confirmation, as well as the differences between the court's litigation practice and the theoretical community, the litigation of confirmation has a tendency to expand.

4. The Relationship between the Interests of the Litigation and the Relevant System

4.1 The Interests of the Litigation are Appropriate for the Parties

The eligibility of the parties refers to certain qualification conditions that the parties wish to become the plaintiff or the defendant and must meet in the process of judicial acceptance of the case, that is, the legal parties. What is the relationship between the eligibility of the parties and the interests of the litigation?

The methods of the court in considering whether the parties have the interest in the litigation and whether the parties are qualified to bring a particular litigation are similar, that is, they are based on whether the litigation is necessary and whether the litigation is necessary to eliminate the dispute to evaluate [9]. The difference is that the court will consider the interest of the litigation from the level of the object of the litigation, that is, whether the plaintiff's claim is necessary and can be effectively relieved; The court will

consider the eligibility of the parties from the level of the subject of litigation, that is, whether it is necessary for the specific subjects to litigate, and whether the litigation can effectively resolve the disputes between the parties. In practice, because of the relationship between the subject of litigation and the object of litigation, the interests of litigation overlap with the eligibility of the parties. That is, whether the court hears the claims between the original defendants, the main consideration [10] of the court is whether the disputes between the two parties can be effectively resolved through trial, so as to achieve the purpose of settling the dispute. The basis of its consideration ultimately depends on whether the dispute itself can be reasonably and properly resolved through the litigation procedure. Therefore, the parties have an interest in litigation if they are fit, and if they are not fit, they have no interest in litigation.

4.2 Interest of Litigation and Right of Litigation

In the civil procedure law, the right of litigation generally refers to the right of a party to submit a dispute to the court and request the court to adjudicate its claims. The condition for realizing the right of litigation is the same as the condition for the court to accept the trial, that is, the existence of the interest of litigation. In the civil procedure theory of our country, the general theory of the right of litigation is the theory of dual right of litigation. That is, the right of substantive litigation and the right of procedural litigation. The procedural right of litigation includes subjective elements and objective elements. The subjective elements refer to which parties have the right to push the dispute to the litigation stage, that is, the parties want to become the plaintiff or the defendant, to participate in the process of judicial acceptance of the case must meet certain qualification conditions, that is, the legal parties; The objective elements refer to whether the rights claimed by the parties are necessary for the court to hold a hearing and support the claims, that is, whether there is an interest in litigation. From the procedural level of the right of litigation, the right of litigation includes the interests of litigation, in the procedural aspect, the right of litigation includes both subjective and objective elements. The subjective requirement refers to

who has the right to appeal and submit the dispute to the proceedings, that is, who has the right to initiate the handling of the dispute in the proceedings and request the court to hear, that is, the problem of the parties' suitability [11]. The objective elements refer to the necessity of whether the claim is established and whether the court needs to support the litigant's claim of rights through trial.

5. Conclusions

In the civil law system, the interest of litigation is not only the requirement for the parties to exercise the right of litigation, but also the premise for the court to conduct civil substantive judgment. Civil disputes are selectively included in the scope of public power relief through the screening mechanism constructed by the confirmed interest of litigation. On the one hand, it restrains the parties' abuse of litigation and limits the exercising boundary of the judicial power of the court; On the other hand, it promotes the generation of rights and expands the effectiveness of judicial dispute settlement. It also means that the interest of litigation is discussed in the affirmative action, and its significance is more significant.

References

- [1] Jiang Wei, Shao Ming, Chen Gang. Research on Civil Litigation rights. Law Press, 2002(02):216-218.
- [2] Chang Yi. Comparative Civil Procedure Law. China University of Political Science and Law Press, 2002(01):361-363.
- [3] Xindo Koji. New Civil Procedure Law, Translated by Lin Jianfeng. Law Press, 2008(01):182-187.
- [4] Zhang Weiping. The Interest of Litigation: Connotation, Function and System Design. Law Review, 2017 (04):88-90.
- [5] Lu Taro. Basic Theory of Civil Litigation. China University of Political Science and Law Press, 2003: 207.
- [6] Taniguchi Anhei. Procedural Justice and Litigation. China University of Political Science and Law Press, 2002(01):187.
- [7] Huang Yuqing. Research on the Interests of the Appeal of Negative Acknowledgement. Dispute Resolution, 2024 (1):25-29.
- [8] Han Bo. On the Nature of the Public Interest Litigation Right of Civil Procurators. Journal of National

- Procurators College, 2023, 28(2):38-52.
- [9] Chen Zhiheng. Exploration on the Function of Interests in Civil Procedure. Theoretical Observation, 2023(10):117-120.
- [10] Yin Qin. On the Correction of "Procedural" Administrative Litigation--On the Positioning of the Fourth-level Court in the Settlement of Administrative Disputes. Jinling Legal Review, 2021(1): 159-176.
- [11] Xin Miaomiao. On the Acceptance and Review Requirements of Litigation for the Non-existence of Confirmation of Debt--Taking the Case of Phoenix Company Suing Zhao Maosheng as an Example. Journal of Jining Normal University, 2021, 43 (3):111-118.