

# On Protection System of Juveniles in View of Public Interest Litigation

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**Abstract.** China's juvenile protection of the legal system has a certain problem, which has led to frequent violations of minors' rights and interests in recent years. These cases have shown violations of the non-specific nature of minors, so it is imperative to bring a corresponding public interest suit against the interests of minors. Through public interest litigation, it can greatly enhance the level of protection of Chinese minors. The civil affairs departments and their establishment of child welfare institutions, women's federations, the Communist Youth League and other social organizations and prosecutors should be the main body of the juvenile public interest litigation, especially the prosecution of minors' public interest litigation should be to fulfill its legal supervision duties.

**Keywords:** Minors 'rights and interests; public interest litigation; maximization of minors' interests.

The term public interest litigation began in the 1960s. At that time, many social systems in the United States were challenged, followed by various attempts to reform the program, the establishment of a large number of public legal institutions and similar advocacy system. They are for the environment, consumers, women, colored people, minors and similar social and public interests of many activities. The resulting litigation is called public interest litigation<sup>[1]</sup>. Public interest litigation is the maintenance of public welfare for the purpose of the litigation system. In recent years, many minor exposures to the frequent exposure of the incident, but also strongly reflects the survival and development of some of China's minors is really worrying. Therefore, it also has the necessity and feasibility for the interests of minors involved in matters related to public interest litigation.

## 1. An Analysis of the Current Situation and Existing Problems of the Legal System of Juvenile Protection

### 1.1 *The Current Situation of China 's Juvenile Protection Legal System*

At the legislative level, the state has always been concerned about the protection of the rights and interests of minors and attention, and achieved some success. Since the reform and opening up has promulgated the "People's Republic of China Minors Protection Law", "Compulsory Education Law of the People's Republic of China", "People's Republic of China Prevention of Juvenile Delinquency Law" and other specialized laws, and in the "Marriage Law" ", "Inheritance law "and many other laws in the protection of the rights and interests of minors related laws. In addition, China has signed the United Nations Convention on the Rights of the Child and its two protocols, the establishment of the State Council Working Committee on Women and Children and the Central Committee for the Management of Public Security to prevent juvenile delinquency. In order to promote the further development of the cause of minors in China, the second decade of this century, the State Council promulgated the "China Children's Development Program (2011-2020)" in accordance with the relevant laws and regulations and the actual situation of the development of Chinese minors. After the Fourth Plenary Session of the Eighteenth Central Committee put forward the overall goal of comprehensively promoting the rule of law, the Supreme People's Court, the Supreme People's Procurator, the Ministry of Public Security and the Ministry of Civil Affairs jointly issued the

Opinions on Several Issues Concerning the Handling of Guardians' Rights and Interests Against Juveniles According to Law (hereinafter referred to as "Processing of opinions"), the relevant judicial interpretation of the law involving minors in order to better protect the rights of minors. The following year, the Standing Committee of the National People's Congress passed the Anti-Domestic Violence Act, which further protected the legitimate rights and interests of the underdogs.

In judicial practice, the court has been particularly concerned about cases involving minors. As early as 1991, Changzhou City, Jiangsu Province, Tianning District Court will involve minors criminal, civil, administrative cases integrated in a juvenile complex. This initiative has been the highest people's court's attention and guidance, "Tianning model" along with the country to be promoted, the development of China's juvenile civil trial began to the professional road. Although China's juvenile civil trials have experienced many twists and turns in the development of more than 20 years, there are still many shortcomings and deficiencies. However, under the influence of existing subjective and objective factors, the Chinese juvenile civil trial pattern has begun to take shape, in the juvenile trial institutions have been initially formed in the Supreme People's Court set up minors trial working group, the local pilot schools set up juvenile comprehensive court pattern. At present the national courts have a total of more than 2,300 juvenile courts, minors in the trial of more than 7400 judges, more than 2,700 clerks to assist juvenile judges to work<sup>[2]</sup>. With the deepening of the trial of minors' civil events, the practice has gradually shifted the focus on cases to the settlement of the family problems behind minors, and there has been a pattern of merging family matters into juvenile courts. In 2014, the Supreme Court juveniles and family cases were merged into juvenile court reform. The establishment of the juvenile family court is in line with the law of the judicial remedy of the rights of minors, which reflects the rationality and maturity of the judicial practice of juvenile rights and interests in the process of protecting the rights and interests of minors.

### *1.2. The Problems Existing in the Legal System of Chinese Juveniles' Protection*

#### *1.2.1 The status of juvenile litigation is missing*

All natural persons can take civil action as a plaintiff when their civil rights are infringed, and the minor has the corresponding civil rights, but the civil capacity is not everyone can enjoy. According to the General Principles of Civil Law, which is to be implemented on 1 July 2017, minors under the age of eight are civil capacity, and minors aged 8 to 16 are considered to be limited to civil capacity, and under 16 years of age Citizens who acquire their primary livelihoods with their own labor are considered to have full civil capacity and those who are 18 years of age or older are adults with full civil capacity. Civil action is a serious and complex civil activities, so in addition to 18 years of age as a full civil capacity and a part of the 16-year-old under the age of 18 and their own source of life outside the minors, other minors do not have Litigation capacity, by its legal representative of its civil action. The legal agent of a minor in a civil action is only a litigation agent, not a plaintiff. But in reality, juvenile parties rarely participate directly in litigation, involving cases often degenerate into ordinary cases between adults. Although these cases are often litigation surrounding or related to the rights of minors, minors are excluded from the decision-making process associated with them because they are considered to have no sufficient cognitive and judgmental powers, and their right to participate in the proceedings is Weakened. The judge cannot hear the wishes from the minors, but cannot see the situation of minors. And Taiwan region of China in the legislation clearly given the qualifications of minors' litigation, minors have the right to influence their decisions to express their views, which is in fact the protection of juvenile litigation rights of the inevitable requirement.<sup>[3]</sup>

#### *1.2.2 Defects in national procedural law*

For a long time, the civil procedure of the Chinese minor has nothing to do with the ordinary civil case between adults. It is the principle of "party litigation mode, supplemented by authoritarianism", emphasizing the negative evidence of the parties' evidence and the judge referee. Such a litigation model lacks a special procedure to run in line with the characteristics of minors, reflecting the needs of minors and facilitating juvenile litigation. Litigation, the mentally immature minors to face directly from the relatives of the dispute, as the relatives of the parties in order to fight for their own power, in the case of trial proceedings, the debate must have a very intense process of confrontation, some minors The case will lead to multiple litigation many appearances, which are suffering for minors.

Minors psychological tolerance is poor, these adverse conditions will directly affect their future healthy growth, but also hurt the young heart, fear of family and cause insecurity. And the current civil proceedings, the trial is too serious, nor suitable for minors to participate.

### 1.2.3 Legislation behind practice

In a comprehensive deepening of the judicial reform today, courts across the country are actively exploring ways to properly solve juvenile cases. Some courts in the case of the trial process, pay attention to minors own mental health problems, through the establishment of psychological intervention mechanism, hire experts not only for minors psychological counseling, but also psychological training of judges, so that judges can more detailed understanding of the intention of the adults to make the most favorable decision to protect the rights and interests of minors; and some courts in the centralized trial of marriage, parent-child relationship caused by minors and related personal rights disputes and property rights disputes associated with this, the collegial panel In particular, it is composed of judges who are familiar with marriage and family trials and experienced judges, and are equipped with at least one female judge and, if necessary, inviting women cadres, child psychologists, etc. as people's jurors; this means that the court has become aware of the law's backwardness , But also to their own trial practice to fill the gaps in the relevant legislation.

1.2.4 The results of the judicial decision did not fully reflect the principle of maximizing the rights and interests of minors

In the litigation involving minors' rights and interests, the core purpose of the judge's trial is to protect the rights and interests of minors from infringement, give full consideration to the wishes of the minors themselves and make a fair judgment. However, the maintenance of the rights and interests of minors in real life is a huge, systematic project, the need for family, society, government, schools, judiciary and other institutions of collaboration. Unfortunately, the linkage mechanism of protection of the rights and interests of minors in China, although in existence, lacks effectiveness. Especially the lack of government departments, the strong participation of social professional institutions, which limits the development of minors' litigation, so that judges in practice is often difficult to achieve the protection of the interests of minors' referee needs. For example, in recent years, there have been many incidents of guardian child abuse in China, but the actual judgment of the revocation of the guardian's case is rare in practice, the most important reason is that the civil affairs departments of the follow-up resettlement work of these children, so that the judge revocation of guardianship cases in the dilemma, it is difficult to judge. The judge of the case only most of the cases can only be critical of the guardian of the education after the judge still maintain the original custody relationship, but some of the guardian after the verdict is still difficult to change, causing some minors or fleeing families become wandering begging children, or because of abuse Leading to the final death of the disabled.

## 2. The Possibility of Introducing Juvenile Protection in Public Interest Litigation

Although China has made some achievements in the protection of minors, but the problem is still in violation of the rights and interests of minors' frequent vicious incidents. These cases present violations of the non-specific nature of minors, as well as the lack of responsibility and the abuse of guardianship. Which greatly endanger the legitimate rights and interests of minors, so the introduction of public interest litigation into the protection of minors possible and should be imperative.

### 2.1. *Public Interest Litigation - Protection of Non-Specific Community Rights and Interests*

The Chinese procedural law only provides for joint litigation, representative litigation and agency action, and does not delineate public interest litigation and non-public interest litigation from the effect of litigation or litigation. On the definition of public interest litigation, the academic community has no clear understanding of this. The author believes that the so-called public interest litigation refers to the specific state organs and related organizations, individuals, according to the law of the authority to violate laws and regulations, violations of state rights and interests, public interest and social rights and interests of the act, to the court proceedings, Its legal activities. Public interest litigation is relative to private interest litigation, private interest litigation is to protect citizens,

legal persons of the legitimate civil rights and interests arising from the litigation; public interest litigation is caused by the protection of public interest litigation. Usually the academic circles of the "Civil Procedure Law" 55 involved in the infringement of many legitimate rights and interests of consumers and environmental pollution cases classified as public interest litigation cases. But these two cases cannot cover all the public welfare cases, the scope of its provisions is too narrow, as early as 2012, Professor Jiang Wei, the Civil Procedure Law proposed amendments to the proposed public interest litigation as a basic principle of civil litigation, but also further refinement Introduce the system of public interest litigation in special procedures. [4] It can be seen that the scope of the case stipulated in Article 55 of the Civil Procedure Law in China is far less than the scope of public interest litigation, which also lays the legislative feasibility for the establishment of public interest litigation for the protection of minors.

### *2.2. Minors' Rights and Interests - an Interest that Requires Special Protection*

Under 18 years of age, adults and adults, their mental, physical development and other aspects of the particularity of the social vulnerable groups determine the basic attributes, they are easily emotional instability, lack of self-control and self-recognition know that there is no resistance to external injury, do not have the ability to live independently, they are extremely dependent on adults. The above characteristics of minors lead to the difficulty and low operability of their rights and interests: First, although minors guardians or guardianship agencies have the function of protecting their rights from infringement, they are often caused by the discontinuities of the infringing events Concealed and decentralized, resulting in the difficulty of excessive rights, cost is too high, the guardian or guardianship agencies and thus lazy or no ability to drive their custody; Second, the physical and mental characteristics of minors and understanding, judgment, control The development of the degree, it cannot take the initiative and timely feedback on the infringing, resulting in the lack of evidence and adversely affected the best rights opportunities; Third, the law gives certain administrative organs, institutions and other units have the function of protecting the rights of minors, but Due to the system is not perfect, the specification is not complete, and even the staff of dereliction of duty, resulting in difficulties encountered on the bucking, to infringes the interests of minors to take advantage of the opportunity.

### *2.3. A New Way to Protect the Rights and Interests of Minors from the Public Welfare Category to the Rights and Interests of Minors*

The successor of the Chinese dream of being a prosperous, democratic, civilized and harmonious socialist modernization and the great rejuvenation of the Chinese nation is the most valuable asset of the state and society, and even the whole nation. A country or nation treats minors. How the attitude directly affects the country's future and the revitalization of the nation. The rights and interests of minors are closely related to the rights and interests of the state, with significant public welfare, is a typical public interest. The protection of the rights of minors, not only to protect adults in general to protect their rights in criminal justice, more important is to protect its increasingly extensive civil rights. For the analysis and interpretation of Article 55 of the Civil Procedure Law, as well as the definition of public interest litigation and the understanding of extension, the mention of public interest litigation does not need to be related to the incident, but the legal authorization can be. In modern society, many countries have set up special minors to protect their duties and carry out protection and supervision work with specialized agencies, and use legal means to confirm and realize the protection of minors. With the implementation of the Anti-Domestic Violence Act and the implementation of the "Opinion", the protection of the rights and interests of minors has really been carried out by the private sector to the public domain. Article 55 of the Civil Procedure Law invoked the case of the protection of the rights and interests of minors initiated by the public interest litigation model from time to time. The introduction of public interest litigation and the protection path of the rights and interests of minors showed a high degree of fit.

## **3. Minors Protect the Scope of Public Interest Litigation Cases**

### *3.1. The Guardian of the Infringing on the Personal Rights and Property Rights of the Minor*

According to the Beijing Youth Legal Aid and Research Center survey data found that 697 cases of 84.79% of cases in the case of parental violence, of which the actual parents of violence accounted for 74.75%, step-parents or foster parent violence accounted for 10.04%; all cases of parents' unilateral violence cases More common, accounting for 76.47%.<sup>[5]</sup> Indeed, China as a deeply influenced by the Confucian culture of the country, "stick under the filial piety" This view has been regarded as a writer's motto, and corporal punishment has become a lot of parents to educate their children. Although the Anti-Domestic Violence Act has been promulgated and implemented, there are operational deficiencies, such as the absence of remedial measures for juvenile domestic violence. I believe that Western countries in the prohibition of domestic violence measures worthy of our study, many states in the United States have provided guardians to implement violence, abuse, abandoned forced prosecution system, that is, when the law enforcement officers found or have sufficient reason to believe the guardian of the guardian of violence, abuse, abandonment, Law enforcement officers must arrest their guardian and subsequently file a custody of custody. At the same time, Norway has established an unconditional judicial prosecution system to give the public prosecution agency without parental consent to abuse their parents to sue. I believe that China should be as soon as possible domestic violence, abandoned minors case into the public interest litigation system, by the state on behalf of the prosecution of their parents, so as to achieve protection of minors.

### *3.2. Non-Guardian of the Infringing on the Personal Rights and Property Rights of Minors*

First, the commercial owners deliberately for the implementation of minor injuries to their health rights and property rights of commercial behavior. Such as selling alcohol and tobacco to minors. Although article 37 of the Law on the Protection of Minors provides that "the prohibition of the sale of alcoholic drinks and tobacco to minors, the operator shall set a sign of not selling alcoholic beverages to minors in a prominent position; if it is difficult to ascertain whether it is an adult, asking them to produce identity documents. "But in real life by alcohol and tobacco sellers on the obvious less than 18-year-old sales object turned a blind eye, and even some black heart merchants deliberately lure and promote tobacco and drink to minors. Such as the sale of fake and shoddy toys and pirated books for minors, as well as certain lawless elements to the juvenile implementation of high interest lending and so on are the minor interests of the greater harm; Second, due to the lack of relevant laws and regulations, business indirect infringement of the interests of minors by the commercial conduct of the subject on unspecified objects. Such as electronic and paper publications, as well as violent pornography in film and television drama and online games and other electronic entertainment products for minors' poison. Modern society has been fully into the information society, with new media as the representative of the mass media carrier is full of violent pornography content. In the daily life of minors in the active or passive acceptance of this content will lead to its precocious or violent behavior, eccentric. And because of the poor self-control of minors, online games and other social software on its temptation is more difficult to resist. According to the China Internet Information Center (CNNIC) 39 China's Internet development survey shows that in 2016 China's 19-year-old Internet users have reached 170 million, accounting for 23.4% of all Internet users, and the growth rate is quite amazing. Minors first hit the network the most concentrated age has been reduced from 15 years to 10 years old. Indulge in the network not only cause the minor to escape the will of the will, indifferent life, escape reality and other adverse psychological reactions, more likely to imitate the network scene of the harsh criminal offenses; Third, other subjects in the implementation of illegal or criminal activities on the rights of minors the infringement. This case mainly deals with the areas of traditional public interest litigation, such as the destruction of the environment and the safety of food and drug safety. It also causes similar adult damage to a certain range of unspecified minors. However, due to the physical and mental development of minors Adults, these acts are more likely to cause serious harm to their health, and therefore worthier of public interest litigation concerns.

### *3.3. Administrative Organs, Public Institutions and other Units and Groups Violate the Non-Traditional Civil Rights and Interests of Minors*

In practice, the administrative organs that have the responsibility to protect, supervise and manage the duties of minors are often violated by exercising their functions or actions or failing to prevail, and

the interests of the minor are infringed upon. Among them, the right to juvenile education is the most common infringement, such as 2005, Qianjiang City, Hubei Province, some primary and secondary schools have long-term phenomenon of arbitrary charges, primary and secondary school students and their parents believe that Board of Education and the Bureau of Price Administration Behavior and Illegal of Qianjiang, and make their own interests have been lost, 14 primary and secondary school students will Board of Education and Price Bureau of Qianjiang to the Qianjiang People's Court.<sup>[6]</sup> In addition, there are violations of the educational subject's right to education, the right to school, and so on. Such as underage disabled people, underage AIDS and hepatitis and other patients in the education and medical services and other services vulnerable to unfair treatment and discrimination. At present, China's lack of effective measures for the protection of minors suffering from infectious diseases, relying on administrative intervention often can only solve individual problems, it is imperative to also such acts into public interest litigation.

#### **4. Juvenile Protection of Public Interest Litigation Plaintiff Qualification**

##### *4.1. Civil Affairs Department and its Establishment of Child Welfare Institutions*

According to the two, two high "processing opinions", the civil affairs department as a legal organ, its obligation to take custody of juvenile custody. Article 27: "The following units and personnel (hereinafter referred to as the relevant units and personnel) have the right to apply to the people's court to revoke the guardian qualification: ... (3) the civil affairs department and its establishment of minors rescue protection agencies; Article 30, paragraph 2: "The People's Procurator shall, in writing, recommend that the local civil affairs department or the minors' aid protection and protection institution to the people's court of the People's Procurator shall, in accordance with the provisions of Article 35 of the present Opinion, So that when the rights and interests of minors involved in social rights and interests have been infringed upon, the government civil affairs departments should protect the rights of minors to do the duties of the door, in the encounter or related personnel to report should be immediately involved in the investigation, if necessary, to lift the prosecution of the prosecution.

At present, the Chinese civil affairs departments under the child welfare agencies, only to receive orphans, abandoned children, no guardian of minors. May be due to the limitations of its protection of the main, play an important role in child welfare agencies in the "treatment" was exempted from liability. "Treatment Opinions" clearly stipulates that minors' aid protection agencies include only relief management stations and minors' relief protection centers, which are protected against wanderers. I believe that the child welfare agencies compared to the rescue management station, minors rescue protection center, there are more social forces support. "Civil Procedure Law" provides that the relevant organizations can bring a lawsuit to the people's court, so that the relevant organizations involved in public interest litigation in legislation has been clearly recognized. To this end, it cannot be pushed to the child welfare institutions, so that in public interest litigation to protect the protection of minors to maximize the protection of one of the main.

##### *4.2. Women's Federation, the Communist Youth League and other Social Groups*

According to the Law on the Protection of Minors, the protection of minors is the common responsibility of state organs, armed forces, political parties, social organizations, enterprises and organizations, urban and rural grassroots self-government organizations, guardians of minors and other adult citizens. Article 5 of the "Opinion" also stipulates that "The people's court, the people's Procurator, the public security organ and the civil affairs department shall strengthen the contact and cooperation with the women's labor committee, the education department, the health department, the Communist Youth League, the women's federation, the working committee and the minors' Actively guide, encourage and support legal services, social work service agencies, charitable organizations and volunteers and other social forces, and jointly do the protection of the protection of minors protection work." But from a specific level of work, the responsibility for the protection of more than the Communist Youth League in the minors under the Ministry of Protection Committee and the Women's Federation under the Women's Working Committee under the exercise.<sup>[7]</sup> In the actual work, the Minors Protection Committee and the Working Committee of Women and Children have long been committed to the protection of the rights and interests of minors, and often with the

education, health, industry and commerce, public security and other departments sincere cooperation, have a good organization and coordination. In addition, the relevant staff to learn the law, often to protect the rights and interests of minors the latest legal training, so I believe that the Minors Protection Committee and the Working Committee on Women and Children on behalf of the exercise of minors public service litigation function is very feasible, in the proceedings, Whether it is investigating evidence or protecting the best interests of minorities have an advantage.

#### *4.3. Procurator Departments*

For a long time, the procurator departments have accumulated rich experience in the protection of minors in the course of criminal proceedings. In order to protect the legal rights and interests of minors in criminal proceedings, the procurator departments of some areas have also established minors' criminal prosecutors. Procurator departments in the criminal justice in a special juvenile indictment procedure for the physiological characteristics of minors' familiar with the civil public interest litigation has accumulated considerable litigation experience. This shows that given the prosecution in the minors to protect public interest litigation is also very appropriate.

### **5. Constructing the System of Public Interest Litigation Protection for Juvenile Rights and Interests with Procurator Department as the Main Body**

#### *5.1. The Procurator Should Become the Core Subject of the Protection of the Rights and Interests of Minors*

First, the prosecution is to mention public interest litigation more appropriate subject. Under the reality of China, it is more appropriate and more effective to talk about the unavoidable problem of public interest litigation in theory. The power act exercised by the procurator in the Chinese judicial system does not have the essence of disposition, and the identity is relatively detached from the other judicial organs or the administrative organs. In addition, the procurators of the staff, hardware and other equipment, compared with other subjects more advantages. Public interest litigation investigation and evidence difficulty and relatively high cost of litigation requires a professional litigation group to take responsibility for prosecution, from the current stage and even for a long period of time to see, only the most appropriate prosecution. Second, the prosecution as a maintenance of national and public interest on behalf of the identity dictates. China's national conditions and the nature of the procurators have determined that the procurators should take the maintenance of the state and the public interest as their primary duty. They must supervise the trial process and the results of the court in accordance with the law and have the duty and obligation when the state and public interests are impaired on behalf of the state and society to recover. The Civil Procedure Law and the Administrative Procedure Law also stipulate that the People's Procurator has the power to supervise the civil and administrative litigation respectively. The procurator has also participated in the second instance procedure of civil and administrative litigation through the exercise of the right of protest. Third, the relevant policies and documents also give the procurators public service litigation main functions. The "Decision of the Central Committee of the Communist Party of China on Several Important Issues Concerning the Administration by Law" requires the procurators to actively explore and establish the system of public interest litigation, give full play to the role of the procurators to supervise the functions of the procurators, promote law enforcement, strictly enforce the law, safeguard the constitutional legal authority and safeguard social justice. In July 2015, the Supreme People's Procurator issued the "Procurator Office to bring public interest litigation pilot program", proposed in 13 provinces and cities to explore the implementation of the procurators to initiate public interest litigation system, to achieve the prosecution public interest litigation from the theoretical high-profile into the judicial practice of transformation, Which is the current prosecution agencies to carry out public interest litigation is the most powerful and most direct basis of the source.

#### *5.2. Several Patterns of Public Prosecution on the Protection of Juvenile Rights and Interests*

In addition to the "Procurator Office of public interest litigation pilot program", the "Civil Procedure Law" Article 14, 15 and 55 provides some of the main body to enjoy the supervision and prosecution, to support prosecution, protest and directly bring the power of public interest litigation,

the prosecution can distinguish between different Situation, and combined with a specific stage of litigation: When the rights and interests of minors have been seriously infringed, there is a clear litigation subject but lazy to exercise the right of action, the prosecution may be prosecuted and other forms of supervision and prosecution, if it is still not prosecuted, the prosecution The prosecution or other subjects have filed a lawsuit, but the need for procurators involved in the proceedings, the prosecution can support the prosecution of the way involved; when the juvenile rights and interests of the referee is wrong, the prosecution in accordance with the law To prosecute; when there is no corresponding subject can bring a lawsuit, or do not want to sue, the prosecution can directly sue as a plaintiff. Of course, for the actual existence of some prominent problems, and sometimes it is necessary to take a combination of four modes, the specific operation can be flexible use, should not be too mechanized.

### *5.3. Several Issues that Need to Be Discussed*

Although the law and related documents stipulate several modes of procurators involved in public interest litigation, but because there is no corresponding system to support, resulting in the protection of juvenile rights and interests of public interest litigation has not been able to form a long-term stable mechanism, so how to build In line with China's national conditions of the juvenile public interest litigation system is still the current China's Justice Bureau is facing a major problem. On specific procedural issues, there are several issues worth discussing and clarifying: First, about litigation participants. When the procurator commits a public interest litigation against the guardian or other civil subject in the capacity of the public interest litigant, the defendant shall be a citizen, legal person or other organization that inflicts the social public interest. The defendant shall have no right of counterclaim in such public interest litigation; The defendant is an administrative organ that has the power to violate the lawful rights and interests of the minor or does not act as an administrative authority for the protection of the rights of the minor, when the public interest litigation is brought to the administrative organ, public institution or other organization as a public interest litigant, and Laws, regulations, rules and regulations of the organization. Second, the effective use of pre-trial procedures. We should give full play to the supervisory function of procurators and try to urge prosecution as much as possible. Time, to "maximize the interests of children" as the guide, fully grasp the procurators to urge the prosecution of the time, in addition to change, revocation of custody and other cases without limitation of the limitation period, should be within two years of the limitation period The Other cases that occur within the family should be promptly dealt with in a timely manner. Upon the initiation of the supervision and prosecution, the relevant supervisory organization or organization shall, within a reasonable time, bring a lawsuit in accordance with the law and return the handling of the situation in writing to the procurator. In the case of the above-mentioned pre-process without the case, the prosecution should be self-litigation. Third, there must be a clear claim. The procurator may submit to the people 's court a request for the defendant to stop the infringement, to remove the obstruction, to eliminate the danger, to restore the status quo, to compensate for the loss, and to apologize for the cause of the protection of the juvenile rights and interests of the guardian or other civil subject. The procurator may propose to the people's court to revoke or partially revoke the illegal administrative act against the minor, to perform the statutory duties within a certain period of time, or to confirm that the administrative act is illegal or invalid or that the administrative act is invalidated or invalidated by the administrative organ or other organization. And so on. Fourth, the burden of proof should be allocated rationally. Juvenile public interest litigation mainly around the realization of the rights and interests of vulnerable groups to protect, we must fully consider the rationality of the distribution of the burden of proof. The proof of the burden of proof can draw on the principle of evidence of administrative litigation, that is, by the prosecution to bear the burden of proof of the facts, the defendant to bear the burden of proof of its legitimacy. Fifth, the rational sharing of litigation risk. The purpose of the juvenile public interest litigation and the nature of the procuratorator itself determines that the risk of such litigation should be borne by the state and the society, that is, the interest after the victory should belong to the minor, and the relevant expenses and responsibilities after the defeat shall be borne by the state.

## References

1. Chen Hongwei. Public interest litigation calls for legislation [N]. Legal Daily. June 17, 2004: 2. (In Chinese)
2. Luo Shuzhen. Supreme court held public open day activities of law around - for the escort [OL]. Chinese Trial Official Website. <http://www.chinatrial.net.cn/news/1550.html> (In Chinese)
3. CHEN Ai—wu. Family Litigation and Protection of the Interests of the Child [J]. Northern Legal Science. 2016, (6): 126-139. (In Chinese)
4. Xuan Mengjie. A new way to protect minors - juvenile protection of public interest litigation [J]. Journal of Hubei University of Economics (Humanities and Social Sciences). 2015, 12(8): 95-98. (In Chinese)
5. Investigation and study of cases of juvenile suffering from domestic violence [OL]. Youth Rights Website. <http://www.chinachild.org/b/rd/7041.html> (In Chinese)
6. Li Xiang. Discussion about the invasion of authority on miners' rights to receive education and the way of the legal redress [D]. Master's Degree Thesis. Guangxi Normal University. 2007. (In Chinese)
7. Yang Xiaohui. On the construction of the protection system of juveniles based on the socialization demand of "whole people" [D]. Master's Degree Thesis. Graduate School of Chinese Academy of Social Sciences. 2012. (In Chinese)

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