

On the Application and Reflection of the Theory of Protective Norms

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Abstract: This article starts from the evolution of the standards for determining the plaintiff's qualification in administrative litigation and the limitations of the current "interest relationship" standard and explores the application of the protection norm theory. The "Liu Guangming" case first introduced the protection norm theory as a tool for determining the plaintiff's qualification in administrative litigation, which has positive significance for the judicial practice of administrative litigation in China. However, in China's practice, there are problems in the application of the protection norm theory, specifically manifested as a mechanical application of the protection norm theory and the lack of a unified judicial application standard. In view of this, in order to solve the practical difficulties, it is necessary to construct a "three-step" application path for the protection norm theory.

Keywords: Administrative procedure law; Standing in administrative litigation; Normative protection theory

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1. Introduction

Since the revision of the new Administrative Procedure Law, the "interest relationship standard" has become the new criterion for determining standing in administrative litigation in China. However, judicial practice has struggled to grasp the abstract concept of "interest relationship." Since the Supreme Court introduced the Normative Protection Theory in the "Liu Guangming Case", this theory has demonstrated a positive reference role for local courts when dealing with similar cases. However, the Normative Protection Theory is not yet mature, leading to issues in its judicial application, specifically manifested in the mechanical application of the theory and the lack of a unified judicial application standard. Therefore, this paper proposes suggestions to address these challenges: constructing a "three-step" application path for the Normative Protection Theory and further improving the interest relationship standard for determining standing in administrative litigation.

2. The determination of standing in administrative litigation and the normative protection theory

2.1. The evolution of standards for determining standing in administrative litigation

The standards for determining standing in administrative litigation in China have gone through four developmental stages. The first stage applied the direct interest relationship standard, where the basis for courts to hear administrative cases was the Civil Procedure Law at the time. As a result, the standing of plaintiffs in administrative litigation also followed the standards for plaintiffs in civil litigation. The second stage applied the administrative counterpart standard. However, due to the term “deem” in the legal provisions, this standard carried a degree of subjectivity. As long as a subject “deemed” that their legitimate rights and interests were infringed upon by a specific administrative act of an administrative organ, they could file an administrative lawsuit. This led to an unlimited expansion of the scope of administrative standing, resulting in a significant increase in the number of administrative litigation cases and placing greater pressure on judicial organs. The third stage applied the legal interest relationship standard, which was relatively more objective compared to previous standards. However, different subjects interpreted “legal interest relationship” differently, potentially causing confusion in the understanding of legal provisions and even restricting citizens’ rights to file lawsuits. At the current stage, the interest relationship standard is the criterion adopted in China’s administrative litigation, which states that “the counterpart of an administrative act and other citizens, legal persons, or organizations with an interest in the administrative act have the right to file a lawsuit following the law.”

2.2. Limitations of the interest relationship standard

Determining the counterpart of an administrative act is relatively straightforward, but how does one assess whether other parties have an interest relationship with the administrative act? In judicial practice, the prevailing view on interest relationship is that “to prove an interest relationship with an administrative act, one must demonstrate how the challenged administrative act may have infringed upon their rights or interests.” Although the interest relationship standard is more objective than the previous three standards, it still faces challenges in judicial practice.

First, the interest relationship standard lacks a clear boundary. For example, suppose an administrative authority revokes a factory’s business license and orders it to cease operations. As a result, the factory’s workers lose their source of income, and other companies with contractual relationships with the factory also suffer losses. In such livelihood-related cases, the workers and other companies would naturally believe that their rights and interests have been harmed by the administrative act. If the influence of an administrative act is extensive enough, anyone could claim to have an interest relationship with it, leading to an abuse of litigation and a waste of judicial resources.

Second, the interest relationship standard fails to provide a definitive criterion in practice. Courts often exercise significant discretion in this regard, and different courts may apply inconsistent standards for determining “interest relationship.” In some judicial documents, one can only find statements such as “the court deems the party has (or does not have) an interest relationship” without detailed reasoning. This lack of explanation can leave parties unable to understand or accept the judgment, prompting them to file appeals or retrials, ultimately increasing the pressure on judicial work.

2.3. The connotation of the normative protection theory

The “Liu Guangming Case” led the Supreme Court to introduce a “foreign concept”—the Normative Protection

Theory—providing a practical method for applying the interest relationship standard. The key to the Normative Protection Theory in determining whether a party has an interest relationship lies in the specific legal norm relied upon by the administrative organ when making the administrative act. If the norm requires the administrative organ to respect and protect a certain right or interest of the party, and the specific administrative act of the organ infringes upon that right or interest that the party seeks to protect through litigation, then the party meets the condition of having an “interest relationship.” Conversely, if the norm does not require the administrative organ to consider that right or interest, then the party does not have an interest relationship under administrative law.

2.4. The significance of introducing the Normative Protection Theory

Before the introduction of the Normative Protection Theory, judicial organs could only consider “interest relationship” from two perspectives: first, whether the rights or interests for which the party sought judicial protection had been harmed, including the possibility of harm; second, whether the rights or interests the party sought to protect had been infringed upon by the administrative act. However, this vague understanding raised further questions: Which rights or interests should be protected by administrative organs? How should the causal relationship between the administrative act and the infringed rights or interests be determined? Is it necessary to establish a standard for the extent of harm suffered by the party?

Looking back at the Supreme Court’s reasoning in the “Liu Guangming Case”, it becomes clear that the Supreme Court, with the help of the Normative Protection Theory, provided a detailed interpretation of the legal norms underlying the challenged administrative act, thereby determining whether the party had standing as a plaintiff. After the introduction of the Normative Protection Theory, the determination of whether a party has standing no longer depends on whether the Administrative Procedure Law or judicial interpretations explicitly include the rights or interests the party seeks to protect. Instead, it shifts to interpreting and analyzing the legal norms on which the administrative act is based.

In comparison, the Normative Protection Theory offers greater objectivity, making the determination of interest relationships more concrete. Under the theoretical framework of “interest relationship”, the plaintiff does not need to bear the burden of proving the existence of a specific right, nor do they need to argue the nature of the right or how it has been affected. Instead, they can infer that their rights or interests have been adversely affected, thereby directly advancing to claims such as the revocation of the administrative act^[1]. This approach also allows courts to avoid repeatedly hearing cases where the plaintiff clearly lacks standing, thereby preventing frivolous lawsuits and ensuring the efficient and effective allocation of judicial resources.

3. Issues with the application of the Normative Protection Theory in China’s judicial practice

3.1. Mechanical application of the Normative Protection Theory

The Normative Protection Theory emerged from the continuous development of German legal theory and the accumulation of judicial practice experience. In China, it was first applied by the Supreme Court in its rulings, sparking a trend of judicial application of the theory. However, it is evident from the rulings of local courts that they were not adequately prepared for its implementation^[2]. Some local courts, without fully understanding the Normative Protection Theory, have mechanically copied and applied the Supreme Court’s reasoning from the “Liu Guangming Case.” They have failed to conduct case-specific analysis and reasoning, instead directly concluding that “no interest relationship exists.” This approach contradicts the original intention of the Supreme Court in

introducing the Normative Protection Theory.

3.2. Mechanical application of the Normative Protection Theory

Due to the high demands placed on judges' understanding and interpretation of legal norms by the Normative Protection Theory, judicial practice in administrative litigation has seen varying standards for determining interest relationships and plaintiff standing across different courts, leading to uncertainty. Additionally, given the heavy workload and significant energy consumption of judges, it is often much easier to deny plaintiff standing than to affirm it when dealing with complex administrative cases involving third-party plaintiffs^[3]. As a result, courts have adopted diverse and inconsistent standards to dismiss lawsuits.

As mentioned earlier, some courts mechanically copy the Supreme Court's reasoning from the "Liu Guangming Case"; others, while citing the reasoning of the "Liu Guangming Case", ultimately revert to the traditional interest relationship standard for judgment; some courts base their decisions on reflective interests or public law rights; and others argue that "violation of public interest" equates to "the norm not providing protection for private interests." Such subjective adjudication standards often lead to a narrowing of the scope of plaintiff standing, failing to achieve true judicial fairness.

4. Suggestions for improving the application of the Normative Protection Theory

4.1. Constructing a "three-step" application path for the Normative Protection Theory

To effectively safeguard citizens' right to sue and fully realize the role of the Normative Protection Theory, a standardized and operable application path for the theory should be established at the judicial level. Based on the perspective of scholar Zhang Jiansheng and the Supreme Court's experience in applying the Normative Protection Theory, a "three-step" application path for the theory can be summarized.

The first step is to identify and locate the specific legal provisions on which the challenged administrative act was based. It is important to note that the scope of this search should be limited to public law, including laws, regulations, rules, and normative documents of a public law nature. Additionally, fundamental rights provisions in the Constitution should not be used as a basis, as the Constitution is not directly applied as a legal basis in judicial rulings in China.

The second step involves using interpretive methods, such as textual interpretation, purposive interpretation, and systematic interpretation, to conduct an expansive analysis of the legal norm. The goal is to examine whether the norm considers, respects, or protects private interests. If doubts remain after exhausting all interpretive methods, priority should be given to interpretations that favor the plaintiff. However, the capacity and resources of the judicial system must also be taken into account, and the scope of expansive interpretation should not be arbitrarily extended. It should be limited to reasonable rights and interests within the realm of public law.

The final step is to assess whether the plaintiff falls within the scope of protection of the legal norm by comparing their claims with the private interests considered, respected, or protected by the norm. If the plaintiff's claims fall within the scope of the norm's consideration, respect, or protection, then the plaintiff has standing; otherwise, they do not.

4.2. Selecting typical cases as guiding cases

Although China does not adopt a case law system, the guiding cases issued by the Supreme People's Court still hold legal authority in unifying the rulings of local courts at all levels. Therefore, it is essential to select typical

cases where people's courts have flexibly and accurately applied the Normative Protection Theory. Based on different causes of action, these cases can be categorized into types such as creditor-debtor relationship cases, environmental rights cases, complaint and reporting cases, neighborhood relationship cases, and housing and land expropriation cases^[4]. These categorized cases can serve as references for people's courts when handling similar cases, maximizing the realization of "consistent rulings for similar cases." At the same time, the categorization of the application of the Normative Protection Theory does not entirely restrict judges' discretionary power. Since no two cases are entirely identical, judges can still conduct case-specific analyses and reasonably exercise their discretion by comprehensively applying legal interpretation methods.

4.3. Regulating administrative agencies' self-restraint and management

As mentioned earlier, the norms referenced in the Normative Protection Theory are limited to public law, and the drafting bodies are mostly government agencies or other functional departments. The primary purpose of administrative agencies in formulating norms is to maintain social order, while the Normative Protection Theory focuses on safeguarding private interests. Under this system, there is inevitably criticism of "acting as both player and referee", making it difficult to ensure the fair protection of the legitimate rights and interests of the parties involved. To achieve the purpose and effectiveness of the Normative Protection Theory, it is necessary to strengthen the self-restraint and management of administrative agencies. When formulating norms, administrative agencies should consider and respect the legitimate rights and interests of citizens, especially those involving privacy and property rights. Strict scrutiny should be applied to assess the necessity and reasonableness of such norms. A balance must be struck between public interest and private interests, avoiding excessive interference or infringement on citizens' rights. Additionally, a sound accountability system should be established. For cases where unreasonable or even illegal norms result in harm to citizens' private interests, clear accountability mechanisms should be enforced to regulate both the drafters and implementers of the norms, ensuring self-discipline within administrative agencies.

5. Conclusion

The Normative Protection Theory plays a positive role in determining interest relationships, providing clear guidance for defining plaintiff standing and, to some extent, advancing the development of administrative litigation law in China. However, its application in judicial practice remains immature, with issues such as mechanical application and inconsistent judicial standards, which limit its potential effectiveness. Therefore, this paper proposes improvement recommendations, including constructing a "three-step" application path, selecting guiding cases, and regulating the self-restraint of administrative agencies, to promote the effective application of the Normative Protection Theory and fully leverage its role in ensuring judicial fairness.

Disclosure statement

The author declares no conflict of interest.

References

- [1] Li QY, 2023, Research on the Application of the Normative Protection Theory in Administrative Litigation in China,

thesis, Dalian Maritime University.

- [2] Bai YF, 2021, Reflection on the Normative Protection Theory and Its Localization Adjustment. *SJTU Law Review*, 2021(1): 102.
- [3] Zhang JL, 2023, Determination of Plaintiff Standing of Creditors in Administrative Litigation, thesis, Guizhou University.
- [4] Jiang Y, 2023, Difficulties and Solutions in the Judicial Application of the Normative Protection Theory in China. *Journal of Heilongjiang Institute of Technology*, 2023(6): 56–61.

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