

Study on Prosecutorial Public Interest Litigation in the Protection of Personal Health Information

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Abstract

As mentioned above, with the continuous development of big data in the world, there are numerous incidents of using this technology to infringe on personal health information, and it has brought personal, property and spiritual damages to the subject of the information and even his/her family members. China's Personal Information Protection Law explicitly incorporates personal information protection into the statutory scope of prosecutorial public interest litigation, the procuratorate shoulders the burden of safeguarding the public interests of the state and society, and is actively exploring the path of protection related to personal health information.

Keywords

Medical Data; Prosecutorial Public Interest Litigation; Administrative Public Interest Litigation; Punitive Damages.

1. Introduction

with the continuous development of big data in the world, there are numerous incidents of using this technology to infringe on personal health information, and it has brought personal, property and spiritual damages to the subject of the information and even his/her family members. China's Personal Information Protection Law explicitly incorporates personal information protection into the statutory scope of prosecutorial public interest litigation [1], the procuratorate shoulders the burden of safeguarding the public interests of the state and society, and is actively exploring the path of protection related to personal health information.

2. Specific paths for public interest litigation to intervene in the protection of personal health information

2.1. The path of administrative public interest litigation

In a typical case handled by the Supreme People's Procuratorate, the Finance Bureau of a certain county disclosed information about personal allowances for people with disabilities, which involved more than 12,000 identity card numbers, bank card numbers, disability status and other sensitive personal data. In response, the local People's Procuratorate initiated preliminary proceedings for administrative public interest litigation, and made recommendations to the Finance Bureau, Disabled Persons' Federation and other departments regarding the handling of personal health information, etc., and urged them to rectify the relevant violations. Finally, the Finance Bureau lifted the identification link to the relevant personal sensitive data. [2] In such cases, fewer citizens will take the initiative to file civil public-interest lawsuits to protect their information rights and interests, and multiple factors such as the cost of litigation and the unequal status of the government and the people will affect the victims' rights to their health information. The cost of litigation, the unequal status between the government and the citizens and other factors will affect the protection of the victim's own

health information. In addition, there is also the "free-rider effect," in which individuals assume that others will take action to protect their common interests, but do not do so themselves. At the same time, according to the principle of "no lawsuit, no reason", the courts in China are in a passive position in lawsuits, while administrative public interest litigation is conducive to the Procuratorate, citizens and relevant social organizations to help individuals affected by the use of health information in big data applications to protect their rights.

According to the Interpretation of the Supreme Court and Supreme Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases, the specific procedure for procuratorial authorities to intervene in the protection of personal information on the Internet and initiate public interest litigation refers to procuratorial authorities making and sending pre-litigation procuratorial recommendations to the relevant supervisory and administrative authorities after investigating and verifying the facts of the case, and then initiating administrative public interest litigation. [3] The intervention of administrative public interest litigation in the field of personal health information protection is characterized by indirectness, flexibility, and globalization, i.e., through the procuratorate's supervision of the administrative authorities, the procuratorate shall also perform its supervisory duties in accordance with the law on data intermediaries, medical institutions, and other enterprises or institutions with the right to obtain public health information, and then continuously improve its legislative and law enforcement methods. In addition, the procuratorate can also supervise the relevant organizations and enterprises through roundtables, consultations, letters and other means, giving full play to its subjectivity and initiative. However, when choosing the path of administrative public interest litigation to intervene in the protection and supervision of personal health information, the following problems will be faced:

First, China's Administrative Procedure Law strictly limits the circumstances under which the procuratorial authorities may bring administrative public interest litigation, which does not include the protection of personal information. [4] That is, the law does not explicitly authorize the procuratorate to bring administrative public interest litigation against administrative agencies and other organizations that handle personal health data in violation of the law, and over-reliance on top-down political support may impede the stable development of procuratorate-led public interest litigation. Some scholars have called for an amendment to the relevant law to explicitly authorize the procuratorate to initiate civil and administrative public interest litigation concerning personal health information. In addition, there is a lack of clear provisions on the criteria for filing administrative public interest litigation cases, prosecution requirements, appeal requirements, and other substantive procedures, which need to be addressed by improving the corresponding procedural laws.

Secondly, the relationship between the procuratorial authorities and the administrative authorities should be properly handled. With regard to the above cases in which the administrative authorities violated the law and handled personal health information, most of them were discovered when the procuratorial authorities were performing their supervisory duties. According to China's Cyberspace Law, the national cyberspace administration is responsible for coordinating the coordination and supervision of personal health data protection. Therefore, a collaborative mechanism between the cyberspace administration and the procuratorial authorities should also be established and improved in order to detect possible health information leakage risks or illegal behaviors in a timely manner and initiate public interest litigation on personal data protection led by the procuratorial authorities to adequately protect personal health information. In addition, due to the extremely fast speed of technological update and iteration of the current big data application, the procuratorial authorities need to rely on the power of the relevant administrative organs when supervising the flow of health data to enterprises in the medical industry [5]. Therefore, the procuratorial

authorities should establish corresponding collaborative mechanisms with the Party committee, the National People's Congress and other organs to obtain support and open up channels for their own supervision work. For the procuratorial organs to bring administrative public interest litigation in the actual use of the outstanding problems can also be further reformed to improve the efficiency of rights and interests.

Third, the need to clarify the procuratorial organs in the administrative public interest litigation, the medical and health industry associations and other industry subjects whether they enjoy the right to supervise. At present, China's laws do not clearly stipulate this issue, the procuratorial authorities can use social governance related to the procuratorial recommendations to the industry self-regulatory associations to put forward how to effectively protect personal health information in the application of big data, prompting them to amend or improve the relevant industry guidelines in a timely manner, and jointly improve the level of governance and management of personal health information.

2.2. Civil Public Interest Litigation

Although civil public interest litigation for personal information protection can be initiated by interested parties themselves, in practice, most information subjects choose to give up their own rights and interests due to the high cost of defending their interests as mentioned above. The Supreme People's Procuratorate has issued the "Guiding Opinions on Actively and Steadily Expanding the Scope of Public Interest Litigation Cases" which has explicitly included personal information protection into the new field of public interest litigation, [6] Therefore, the protection of personal health information is still more dependent on administrative public interest litigation.

3. Improvement of Punitive Damages System in Public Interest Litigation

3.1. Specific conditions for the application of punitive damages

Realistic cases show that, at present, in the administrative public interest litigation of personal information protection, the litigation demands mainly include apology and compensation for loss. In order to increase the illegal cost of violating personal health information, the content of punitive damages should be emphasized. According to the relevant laws of China, the application of punitive damages should have the following four elements:

First, in the subjective elements, the information infringer subjectively with intent, or obviously do not consider the rights and interests of personal health information, with serious data behavior and gross negligence behavior, can be harsh punitive damages to the perpetrator. Second, in the objective elements, there should be a wrongdoer to act or omission to implement the behavior of the legitimate rights and interests of the victim. For example, if a personal health information violator, such as a data collection organization, illegally sells the collected medical data, causing the leakage of personal health information and damaging the privacy rights of others. In terms of objective elements, the objective illegal behavior committed by the wrongdoer has caused the victim's loss, which includes direct property loss, loss of expectable benefits and loss of non-material damages (in this case, it only refers to moral damages). Finally, in terms of causality, there is a causal relationship between the leakage of personal health information and the perpetrator's tortious behavior, which means that the damage to the individual's privacy rights and interests is caused by the perpetrator's behavior of selling personal information and so on, and not by other reasons.

3.2. Determination of the amount of applicable punitive damages

In most cases concerning personal health information, the procuratorial and judicial authorities generally determine the amount of compensation in accordance with the profitability of the infringing subject. Cases of infringement of personal health information in the Internet involve

a huge amount of personal information, but the price of each piece of information is very low, which may lead to a mismatch between the amount of compensation determined and the actual and potential harm caused to the society and the subject of the information, and fails to achieve the effect of deterring the offenders. For example, in the case of Li Moumou's criminal incidental civil public interest litigation for infringement of citizens' personal information, the defendant, after illegally obtaining 93,614 pieces of personal information, utilized the said information to register an account on the Internet, receive coupons, etc. for a profit of RMB 100 yuan, while the prosecuting authority filed a compensation amount of RMB 100 yuan in this case [7], which is clearly unconscionable and difficult to deter similar offenders. In another case of criminal incidental civil public interest litigation for violation of citizens' personal information by Li Moumou, the defendant, Li Moumou, illegally obtained and resold citizens' personal health data and other information for a total profit of \$11,810, while the procuratorate proposed punitive damages of \$35,430, which was supported by the trial court [8].

In China, the Law on the Protection of Consumer Rights and Interests explicitly provides for a punitive compensation system [9]. From the above administrative public interest litigation cases filed by the procuratorial authorities, the proportion of cases in which punitive damages were proposed in the litigation request was small, and the court's final judgment in favor of the amount of the request was also small. It is suggested that the amount of punitive damages in public interest litigation cases against personal health information can be determined with reference to the relevant provisions of the Consumer Rights and Interests Protection Law or the Food Safety Law, and in addition to compensation for the amount of profit, the perpetrator can also be required to bear the punitive amount of ten times the profit gained.

3.3. The application of punitive damages shall follow the principle of equivalent punishment.

The application of punitive damages to the subject of infringement of personal health information should follow the principle of equivalence of punishment, i.e., the penalty imposed on the infringer should be consistent with his or her illegal behavior [10], which can also be referred to as "commensurate". The principle of proportionality, also known as the "principle of proportionality", is reflected in the GDPR and HIPAA, and is designed to ensure that the subject of personal health information has access to adequate remedies in the event of a breach of privacy. The principle of proportionality can be traced back to the 19th century Prussian administrative law protecting the inviolability of individuals' constitutional rights, and the test for this principle is as follows: first, there must be a cause for the punishment, which complies with the above four elements for the application of punitive damages; second, the amount of damages is reasonably related to the punishment of the tortfeasor and the preservation of social stability (reasonableness); second, the strength of the punishment is necessary (necessity); and lastly, the amount of damages is reasonably related to the punishment of the tortfeasor and the preservation of social stability (reasonableness).); and lastly, the amount of the compensation may exceed the loss of the subject of the information, but should not exceed the legal limit [11]. The above test is currently applied in many countries, although the jurisprudence of the United States on punitive damages tends to favor "equity" [12], i.e. balancing the rights of the parties rather than determining proportionality in punitive damages.

4. Conclusion

In summary, prosecutorial public interest litigation plays a very important role in the protection of personal health information, and the procuratorate shoulders the burden of safeguarding the public interests of the state and society, and actively explores the relevant protection path of personal health information.

References

- [1] Article 70 of the Personal Information Protection Law of the People's Republic of China states that if a processor of personal information violates the provisions of this law by handling personal information in a way that infringes on the rights and interests of a large number of individuals, the People's Procuratorate, a consumer organization prescribed by law, and an organization determined by the State Internet Information Technology Department may, in accordance with the law, institute legal proceedings in the People's Courts.
- [2] Fei Yang. Kaili Zheng, "Protecting people with disabilities data privacy in government information disclosure: facilitation by procurator-led public-interest litigation", *Disability & Society*, 2023.
- [3] Article 21 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases stipulates that if the people's procuratorate, in the performance of its duties, finds that an administrative organ with supervisory and management responsibilities in the fields of ecological environment and resource protection, food and drug safety, protection of state-owned property, and the granting of the right to use state-owned land has violated the law in the exercise of its functions or has failed to take any action, thus infringing upon the national interests or social Where public interests are infringed upon, procuratorial recommendations shall be made to the administrative organ, urging it to fulfill its duties in accordance with the law.
- [4] Article 25 of the Administrative Procedure Law of the People's Republic of China provides that the relative of an administrative act, as well as other citizens, legal persons or other organizations having an interest in the administrative act, have the right to bring a lawsuit.
- [5] Liu Jiapu and Wang Zijian, "The path and measures of procuratorial public interest litigation to intervene in the protection of personal information on the Internet", in *China Prosecutor*, No. 9, 2021, p. 55.
- [6] Article 7 of the "Guiding Opinions on Actively and Steadily Expanding the Scope of Public Interest Litigation Cases" states that the SPP will issue guiding cases and typical cases in new fields in due course in batches, based on the main points of annual public interest litigation, and in accordance with the needs of the development of the situation of public interest protection In 2020, the Supreme People's Procuratorate will focus on releasing typical cases in new fields such as production safety, protection of cultural relics and cultural heritage, and network infringement (personal information protection). Provincial procuratorates should strengthen case study and training, and instruct procuratorates in their jurisdictions to handle similar cases in new fields with reference to them.
- [7] See Shenzhen Luohu District People's Court's Criminal Incidental Civil Judgement (2020) Guangdong 0303 Criminal Beginning No. 445.
- [8] See the first-instance criminal judgment of the Wuji County People's Court of Hebei Province (2018) Ji 0130 Criminal Beginnings No. 134.
- [9] Article 55 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests states that where an operator has committed fraud in the provision of commodities or services, he or she shall, at the request of the consumer, increase his or her damages, and the amount of the increased compensation shall be three times the price of the commodities purchased by the consumer or the cost of the service received by him or her; where the amount of the increased compensation is less than If the amount of additional compensation is less than five hundred yuan, it shall be five hundred yuan. If the law provides otherwise, it shall be in accordance with its provisions. Article 179 of the Civil Code of the People's Republic of China states that civil liability can be assumed in the following ways: (1) stopping the infringement; (2) removing obstruction; (3) eliminating danger; (4) returning property; (5) restoring the original state; (6) repairing, remaking, or replacing; (7) continuing to perform; (8) compensating for losses; and (9) providing compensation for damages. Compensation for damages; (i) payment of liquidated damages; (j) elimination of influence, restore reputation; (k) apologize. If the law provides for punitive damages, it shall do so in accordance with its provisions.

- [10] Article 5 of the Law of the People's Republic of China on Administrative Penalties, administrative penalties shall follow the principles of fairness and openness. The setting and implementation of administrative penalties must be based on the facts, and be commensurate with the facts, nature, circumstances and degree of social harm of the offending act.
- [11] Article 5 of the Law of the People's Republic of China on Administrative Penalties, administrative penalties shall follow the principles of fairness and openness. The setting and implementation of administrative penalties must be based on the facts, and be commensurate with the facts, nature, circumstances and degree of social harm of the offending act.
- [12] Grgoire C. Webber N, "Proportionality, balancing, and the cult of constitutional rights scholarship", Can J Law Jurisprudence, 2010.