

Research on the Legal System of Representative Action in China

Caiyun Zhang

School of Law, Anhui University of Finance and Economics, Bengbu 233030, China

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Abstract

As a special litigation form, representative litigation has more prominent advantages than traditional litigation mode in dealing with group disputes. The theoretical basis of agency litigation includes litigation efficiency, right relief and unity of application. As far as the judicial practice of our country is concerned, the actual operation effect of this system has not reached the initial expectation of the legislation, its application rate is very low, and its bearing function is also limited to a certain extent, can not meet the actual needs of solving group disputes. The problems in the representative litigation system mainly lie in the following aspects: the limited application scope of the representative litigation, the imperfect announcement procedure, the blank of the appeal legislation procedure and the lack of the reward mechanism. Therefore, in order to play the role of this system well, we must constantly improve it and test it in practice, so as to better play its due role. It is necessary to expand the scope of application of representative litigation, lower the threshold of application, so that more and more parties involved in a large number of cases to participate in litigation activities and protect their legitimate rights and interests. Second, we should improve the announcement procedure, for some "Free rider" illegal acts, will be severely punished. In addition, we should perfect the legislative 23 procedure of appeal, because in our country's litigation system and judicial interpretation, there is no special legislative provision for representative litigation, therefore, there is a contradiction between the judicial interpretation and the actual implementation of the appeal, which requires us to conduct an in-depth analysis and study on the problems existing in the appeal procedure, and constantly improve and optimize it. Finally, we should build a mechanism to reward and motivate the litigant representative, when a party with a large number of litigants wins a case in group litigation, the representative can be given the right to receive compensation in priority, and get paid for it.

Keywords

Representative action; Group disputes; Institutional improvement

1. Basic Theory of Representative Action in China

1.1. Definition of Representative Action

When the subject matter of litigation is joint or of the same type and one or both parties consist of a large number of people, one or several persons may be selected as litigation representatives to sue or defend on behalf of the others. This is what we usually call the representative action system. The system has strict conditions for application:

First, in general, when one side involves a large number of people, the number should be at least ten. Second, the case involving numerous parties must be based on the same legal facts, and the subject matter of the litigation must be the same or belong to the same category. Third, the representative must be qualified. A qualified representative must be an agent who shares common interests with other agents; must have sufficient legal capacity to handle different situations; and must ensure that the duties of the legal representative are properly fulfilled. In order to protect the legitimate rights and interests of the litigation representatives in good faith, they should be selected through election by the parties or through consultation between the court and the parties. Fourth, the same claim or the same defense method must be presented. When initiating a lawsuit, if one party has a large number of people, in addition to involving the same or similar subject matter of litigation, it must also ensure that the claims or defense methods are the same. If there are differences among the members, unity must be ensured to avoid different situations. When a large number of parties cannot reach a consensus on the claims and defense methods within the group, representatives may be elected to participate in the litigation.

1.2. Nature of Representative Action

The nature of representative action has long lacked a clear definition. Through research on relevant literature, this paper finds that representative action is a type of group litigation that is both representative and independent. This paper advocates incorporating the representative action system into the category of group litigation. Scholars have divergent views on the definition of group litigation and have not yet reached a consensus. According to Professor Zhang Weiping, group litigation differs significantly from joint litigation in terms of characteristics, functions, and the litigation of multiple parties, and they have different litigation statuses [1].

In group litigation, there is a large number of parties who, due to common interests, temporarily form a group. This group is not a civil subject under substantive law but sues in the name of the group. Like other groups, this group can participate in civil litigation activities. The group has independent litigation subject qualification; however, once the judgment takes effect for every member of the “group,” the mission of the group is completed, and the group subsequently disappears. The group litigation system is such a system. Although Japanese scholar Takeshi Kojima believes that the group litigation system has unique advantages in protecting the interests of vulnerable groups and avoiding contradictions in court judgments, its single nature of trial procedures makes it irreplaceable in terms of litigation economy and efficiency [2].

According to scholar Yan Yangyan, the representative action system is not a traditional form of litigation, and its nature should not be simply classified as a single action or joint action; it should be recognized as a group litigation system [3]. From a functional perspective, representative action has the following values. As a modern form of litigation, representative action aims to resolve group disputes, effectively improving litigation efficiency by integrating similar claims for one-time relief; at the same time, it has a broad and profound social foundation, providing parties with equal opportunities to participate in judicial activities. Through representative action, plaintiffs can gather together, leveraging their collective advantage to form a force against their opponents, thereby better protecting the legitimate rights and interests of vulnerable groups. Representative action refers to the joint trial and joint judgment of the same type of cases, ensuring the consistency of legal application in the same type of cases. Although it is classified as group litigation, the two are not treated equally. Group litigation is a broad concept. In addition, countries around the world adopt group litigation suitable for their own situations to handle group disputes. For example, the United States adopts class action, which has gradually influenced the world since its establishment in the United States. In addition, Japan's group litigation is also based on the selection of parties.

2. Basic Models of Group Litigation in the United States and Germany

Compared to other countries, China's group litigation system developed relatively late. However, typical group litigation models in countries such as the United States, Germany, and Japan have become relatively mature. We should analyze and discuss their advantages, take the essence and discard the dross, and base ourselves on China's national conditions to promote the development of our own litigation system.

2.1. The Class Action System in the United States

The class action system refers to a mechanism where a majority, or all, of the joint litigants file a lawsuit on behalf of themselves or a small portion of people who share common interests with them. In Western developed countries, class action has become a widely adopted form of litigation and is considered one of the most effective means of resolving social disputes. Its fame stems from its ability to provide legal relief for most victims who have suffered small losses.

Class action has the following characteristics: First, the concept of the class as a subject is a special subject legally fictitious, with the criterion for division being the same legal event or common interests, and judicial power grants it party qualification through law. Second, because the litigation representative adopts a default, passive form, initiating group litigation does not necessarily require the consent of the other party. In addition, to clarify the number, an "opt-out system" is adopted,

meaning that those who do not explicitly indicate withdrawal from the group are considered members of the group, and the court has the authority to make a ruling that is binding on all members of the class. Furthermore, the judgment only needs to clarify the overall rights and obligations of the class, and the effect of the judgment is not limited to the parties present in court. Finally, indirectness is a characteristic of this power exercise, meaning that only the litigation representative can uniformly exercise the substantive rights of the litigation on behalf of the other members, and the other members do not need to personally participate.

In U.S. class actions, the litigation representative, with its efficient manner of filing and broad litigation rights, plays a crucial leading role in the litigation process. This gives class action a powerful integration function that can quickly gather a large number of small-amount subjects, thereby integrating the claims of the majority for unified handling and improving the efficiency of judicial work. Second, the legitimate rights and interests of the parties are promptly protected, and illegal acts are punished, thanks to the efficient, convenient, and quick initiation of litigation procedures. Because it adapts to the characteristics of high mobility of subjects in the market economy, the complexity and variability of commercial behavior, etc., its requirements for accepting cases are low, and it breaks the limitations of time and space.

Of course, the smooth operation of the class action system cannot be separated from various other legal systems that fit its climate, such as the punitive damages system and the lawyer's contingency fee system. The challenges faced by the class action system include but are not limited to: lengthy litigation time, huge capital investment, manipulation by lawyers leading to abuse and malicious litigation, and distribution of interests within the collective.

2.2. The Group Action System in Germany

German jurisprudence is renowned for its precise thinking and rigorous logic. Its advocacy of the traditional continental law system's party theory is mainly reflected in the use of the joint litigation system to resolve group disputes. However, in contemporary society, due to the limitations of the joint litigation system, it cannot timely and effectively resolve various large-scale group disputes. Therefore, Germany has adopted a unique collective litigation system. Group action is a form of litigation explicitly stipulated by law. It refers to the legal grant of substantive rights to eligible groups, enabling them to independently file lawsuits and assume obligations. It can be said to be a system where statutory public welfare social groups, aimed at protecting public or social interests, file lawsuits in their own name to protect their own rights and interests.

In Germany, group action is considered a special existence that transcends traditional litigation methods [4]. In traditional group actions, most adopt a form of action for omission. With the continuous evolution of society, the form and content of

group actions are also constantly innovating and expanding. In Germany, under certain circumstances, the plaintiff group has the right to claim compensation, and its rights have been strengthened, which is conducive to the full play of the role of group actions and ultimately achieves justice. In Germany, the plaintiff group, under specific circumstances, enjoys the right to claim compensation, which strengthens its rights, is conducive to the full play of the function of group litigation, and realizes judicial fairness. The system originated from Germany's "General Investor Litigation Procedure," but later introduced the concept of "damages" in the "General Investor Litigation" and "General Investor Litigation," thereby enriching the connotation of the system. In France, consumer organization litigation has also made significant progress, and victims can submit claims to the organization in writing.

Compared to the group litigation system in the United States, Germany's group action has its own strengths: First, the litigation filed by the group is limited to post-hoc relief, and compensation can only be provided and punishment implemented after the damage event has occurred. The group action system not only provides early remedy for actions for omission but, through continuous improvement of the damages system, has taken on the rudiments of a dual relief system. Second, because the identity of the group as a litigation subject is granted by judicial power and is, to some extent, temporary and fictitious, if the plaintiff is a collective, after the trial ends, the plaintiff's identity also disappears. The legality and stability of the term "group" can not only avoid the hassles of review, joining, and withdrawing in class actions but also facilitate supervision. Third, group litigation is an extension of "litigation authority," fundamentally different from traditional "two-party litigation," theoretically irreconcilable contradictions exist, and the procedures are extremely complex, requiring corresponding auxiliary and follow-up measures.

It is worth noting that certain practices in China's public interest litigation have emerged based on the experience of group actions. The author believes that there are quite a few similarities between the two: first, their purpose is to protect public interests and social interests; second, legitimate recognized subjects should be granted the right to litigate, mainly referring to public welfare social groups, statutory organs, and statutory organizations, enabling them to litigate in their own name; third, the transformation from a "one-to-many" model to a "one-to-one" model, incorporating it into two-party litigation, achieving new breakthroughs while maintaining tradition; fourth, both adopt public enforcement methods and have gradual development in the system. Therefore, we should seriously study and draw on its development history and, on this basis, continuously improve our own legal system.

3. Problems in China's Representative Action System

With the rapid development of society, economy, and technology, the scale of industrial and commercial production is increasing, and people's consumption patterns are becoming more diversified. The actions of some large enterprises and corpora-

tions have a significant impact on the country's society. Therefore, how to effectively solve the various problems people face in real life through institutional arrangements has become a major issue that urgently needs to be addressed. Among these, there are certain defects and shortcomings in China's current representative action system, which need to be improved and innovated in a timely manner. To ensure the sustainable development of China's representative action system, judicial and legislative departments should attach great importance to the issue and, based on the current development status of the representative action system, continuously carry out system reforms and improvements to address various problems encountered during implementation.

3.1. Limited Scope of Application of the Litigation System

Compared to traditional litigation standards, the scope and types of representative action cover a unified type or identification of the subject matter of litigation theory. The existing subject matter of litigation theory has certain limitations, and the representative action system has a unified type of substantive rights and legal relations. In the same case, due to damage to the interests of many people, some may file breach of contract lawsuits, while others may file tort lawsuits, resulting in contradictions. China's representative action system needs to be continuously improved and optimized to address the lack of unified norms in breach of contract and tort litigation in substantive legal relations, thereby effectively coping with various challenges in litigation activities.

3.2. Imperfections in the Public Notice Procedure

In China's representative action legislation, the court may decide whether to issue a public notice for litigation with an indefinite number of parties in representative actions. The establishment of this system aims to enable certain parties to conduct litigation without the help of litigation representatives. If the parties do not wish to issue a public notice, they can apply for non-publication. However, in real life, parties often need the help of litigation representatives to file lawsuits. If the court's related procedures are too cumbersome, it is difficult to effectively implement them, which also affects the operation and development of litigation with an indefinite number of representatives in litigation legislation.

3.3. Gaps in Appellate Legislative Procedures

Currently, neither judicial interpretations nor relevant laws and regulations have made clear provisions for diverse litigation needs. For example, in the absence of a clear legal judgment, if a party wishes to appeal again, it creates uncertainty, especially in cases involving multiple parties, where some may wish to appeal and others may not. In such cases, relevant judicial authorities need to evaluate and handle various situations arising from individual and collective litigation, analyze the defi-

ciencies in litigation, and adopt appropriate measures to resolve the different problems that arise [5].

3.4. Lack of Incentive Mechanisms for Litigation Representatives

China's current Civil Procedure Law lacks incentive mechanisms for representatives, with no clear provisions on whether representatives are entitled to compensation or rewards. When initiating representative action, the right holder often seeks maximum benefits from their own interests. From the perspective of benefits and costs, if the benefits outweigh the costs, the likelihood of initiating representative action will be greatly reduced. If the litigation representative cannot personally participate in the litigation, the heavy workload will make the right holder reluctant to file a lawsuit. Meng Xinran cites Olson's "collective action" theory, suggesting that in representative action, parties often have the idea of "free-riding," which affects the balance of interests and game among the parties, making them unwilling to become representatives to initiate litigation. This is a specific manifestation of the "collective action" theory. At the same time, she also provides an effective way to effectively stimulate representative action [6]. China's current civil litigation legislation lacks provisions on the priority right to compensation and reward system for legal representatives, which should be improved legislatively to provide appropriate economic rewards for litigation representatives.

4. Countermeasures for Improving China's Representative Action System

Although the group litigation resolution models adopted by various countries have their own characteristics, no single model can completely replace the representative action system as the main way to resolve group disputes in China. Therefore, in order to better serve the country's legal work, in-depth research and exploration of the representative action system has become an important issue that urgently needs to be addressed at present. To this end, we can proceed from the following perspectives:

4.1. Relaxing the Scope of Application of Representative Action

From the perspective of judicial interpretation, China's representative action mainly focuses on protecting its own legitimate rights and interests, while public interest litigation with agency as the main body is relatively rare, and in some places, it is even nonexistent. To change this situation, we can learn from foreign legislative experience, clarify the applicable conditions and scope of public interest litigation, and grant it the corresponding right to sue. For cases with an indefinite number of people, it may be considered to allow some representative individuals to file a lawsuit without further registration, provided the consent of the right holders is obtained. In the current representative action system, due to various factors such as litigation

activities and litigation conditions, representatives are unable to exercise their autonomy, which not only limits their full play of capabilities and advantages but also leads to repeated operations and consumption of procedures, thereby delaying litigation time and procedures. In the face of this phenomenon, we can refer to the legislative litigation handling experience of Western countries. Under the supervision and cooperation of relevant courts, representatives are granted the power of disposition and substantive disposition in representative action, thereby constructing a representative action system that meets the needs of society and national litigation, helping to resolve large-scale group disputes, and promoting the long-term and sustainable development of the litigation system [7].

4.2. Improving the Public Notice Procedure and Strengthening Qualification Review

In the development of China's representative action, some "free-riding" phenomena have emerged. To change this phenomenon, under the guidance and incentives of legislative bodies, interests should be protected through group litigation, and illegal "free-riding" behaviors should be severely punished. Relevant courts should not rigidly adhere to traditional methods during the judgment process but should adopt flexible and efficient collaborative methods. If the relevant right holders fail to fulfill their obligations within the period announced by the court, or if they know very little about the content announced by the court and do not exercise their right to register, then the relevant parties must pay a fee according to the results announced by the court to conclude the litigation procedure. If the relevant right holders are aware of the content of the announcement but do not exercise their right to register, and they win in the first instance and need to file a second lawsuit, then the court department will appropriately reduce the amount of compensation based on the specific circumstances, with the minimum compensation amount being twice the cost of other registered right holders. In this way, not only can the litigation rights and obligations of the parties be effectively protected, but also the behavior of representatives can be effectively supervised, achieving twice the result with half the effort. The ability of the parties to file lawsuits and their qualifications, as well as the coordination and cooperation capabilities among various functional departments within the court, should also be standardized. By regulating the above issues one by one, the system can better play its role, thereby enhancing its sense of responsibility and overall quality.

4.3. Establishing and Implementing an Improved Appellate System

At present, due to the lack of specific legal norms for representative action, there is a significant gap between relevant judicial interpretations and practical operations. Therefore, problems arising from representative action must be deeply analyzed and studied, and improvements and optimizations must be made. This will be dis-

cussed from two main aspects. First, after the results of the first instance are released, if the relevant representatives waive the right to appeal but the parties wish to continue the appeal, the current judicial system does not provide for specialized litigation procedures. In addition, after the parties have selected a representative, they can still exercise their litigation rights according to their own wishes, and if they are unwilling to accept the representative to act on their behalf, they can continue the litigation according to the original procedures. Therefore, it is also necessary to protect the parties' right to appeal. Second, after the judgment of the first instance is made, although the parties may not choose to appeal again, if their representative believes that the original judgment does not meet their expectations, they can still file an appeal. Through the analysis of litigation law theory, we can draw such a conclusion: regardless of whether the representative's appeal is favorable or unfavorable to the parties, the judgment will be binding on the parties, and the parties must bear the corresponding consequences. These consequences include the results of both the first and second instances in which the representative participated [8].

4.4. Adopting Appropriate Incentive and Reward Mechanisms

The life of a good system lies in its use and recognition. In order for China's representative action system to play its proper role, it is necessary to establish corresponding reward mechanisms to truly activate it. Law has the characteristics of lag, and the legal system also has issues of imperfection. The legal literacy of the people is still in the process of growth. To make people have a belief, trust, and reverence for the law is the key to promoting the modernization of the law. From ancient times to the present, the influence of the "no litigation" ideology on us has been enormous. When the damage to interests is small, people generally do not resolve disputes through litigation. However, if corresponding incentive measures are established, it can promote people to understand the law and actively use litigation methods to protect their legitimate rights and interests. It can also promote the application of the majority litigation system established in China.

5. Conclusion

The establishment of the representative action system is undoubtedly an effective measure for resolving group disputes in China, promoting the further development and improvement of China's litigation system. The provisions on the representative action system in the Civil Procedure.

References

- [1] Yang Yunxia, Qin Xiaojing & Li Yajuan. "An Analysis of the Representative Action System Using Game Theory," *Journal of Northwest University*, 2005, no. 3.
- [2] Wang Xinping, Chen Hangping & Liu Junbo. *Chinese Civil Procedure Law*, 2nd ed., Beijing: Higher Education Press, 2020, pp. 189-200.

- [3] Zhang Weiping, ed. *Litigation Framework and Procedure—A Jurisprudential Analysis of Civil Procedure Law*, Beijing: Tsinghua University Press, 2000, p. 316.
- [4] Zhu Lei. “Basic Models and Path Choices of Group Litigation: A Comparative-Law Study Focusing on the United States, Germany, and Japan,” *Journal of the CPC Urumqi Municipal Committee Party School*, 2013, no. 3.