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Research on Subject Qualification of Anti-Monopoly Civil Public Interest Litigation

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Abstract: *In recent years, with the development of the market economy, the number of illegal monopoly cases is increasing. The new Anti-Monopoly Law of the People's Republic of China (hereinafter referred to as the New Anti-Monopoly Law) was amended on June 24, 2022, in order to better maintain the order of the market economy, crack down on monopolistic behaviors and improve the legal system in the anti-monopoly field. Since then, the anti-monopoly civil public interest litigation system has formally entered the field of anti-monopoly law as a new system. However, the revised Law does not make detailed provisions on the civil public interest litigation system. In terms of the provisions on the subject of public interest litigation, the current law only stipulates that the procuratorial organ is the subject that can initiate public interest litigation, which makes it difficult for some cases infringing on social public interests to be well resolved through public interest litigation. Therefore, this paper will take Article 55 of the Civil Procedure Law and Article 47 of the Protection of Consumer Rights and Interests as the basis point, and briefly introduce the relevant provisions on the subject qualification of the anti-monopoly civil public interest procedure law in foreign jurisdictions. Based on this view, it is necessary for the main body of anti-monopoly public litigation to become more diversified to ensure that the main body of litigation can play substantial effect in judicial practice.At the same time, it is necessary to improve the existing procedures and improve the related supporting subjects' difficulties in providing evidence and the lack of litigation incentives , so as to provide ideas for the improvement of the subject qualification of public litigation in the field of anti-monopoly law.*

Keywords: *Anti-monopoly law; Civil public interest litigation; Subject qualification*

1. Introduction

The promulgation of the second paragraph of Article 60 of the new Anti-Monopoly Law has important practical significance for public interest litigation in the field of anti-monopoly. The anti-monopoly civil public interest litigation system can provide procedural support for the implementation of anti-monopoly law and also provide an important means of litigation for the fight against monopolistic behavior. It can also further enhance the awareness of protecting the rights of citizens who are infringed by the ridge to protect their legitimate interests, and better fight against monopolistic behavior. However, according to the provisions of the new Anti-monopoly Law, the subject range of civil public interest litigation is very small. Therefore, the research on the extension of the subject qualification scope of anti-monopoly civil public interest litigation can improve the relevant legal system. It can strengthen the legitimacy and rationality of individual consumers and social groups to obtain the plaintiff qualification. Individual consumers are directly benefiting or harming the maximization of social public interests, so theoretically they also have the right to exercise public interest litigation, so they should be the direct exercisers of public interest demands. Since the public interest litigation system was established in legal form, the China Consumers Association and local consumers' associations have actively carried out the practice of public interest litigation, and improved the rules for the working procedures of public interest litigation. It has continuously strengthened cooperation with judicial organs, reduced the cost of public interest litigation, and effectively safeguarded the legitimate rights and interests of many non-specific consumers and social public interests in the fields involved in litigation. Since the institutional reform in 2018, the professional strength of the National Consumer Associations has been further enhanced. As a professional social organization to safeguard the rights and interests of consumers, consumers' associations can organize anti-monopoly civil public interest litigation to form an effective counterbalance to monopoly operators[1].

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2. RealisStic basic research on the subject of Anti-monopoly civil public interest litigation

Entering into the 21st century, with the development of the economy of our country, a large number of illegal cases of monopoly have emerged continuously, which not only affecting the healthy development of the market economy, but also seriously damaging the legal rights and interests of consumers and the social public interests. Prior to the completion of the amendment of the Anti-Monopoly Law on June 24, 2022, China's private anti-monopoly litigation mechanism for individuals would often give up litigation due to the spread of anti-monopoly damages, the limitation of damages to actual losses, the difficulty of proof, the disproportionate cost of litigation, litigation results and costs, and other reasons. This will not only make infringement unregulated but also greatly damage the social and economic system. Therefore, in order to protect the rights and interests of many victims, the government of our country, in 2012, amended Article 55 of the People's Republic of China Civil Procedure Law, which also marks that our country has formally established public interest litigation system through the form of legislation. In 2013, Article 47 of the Law on the Protection of the Rights and Interests of Consumers of the People's Republic of China was amended, stipulating that consumer associations at or above the provincial level have the right to Sue for public interest. This amendment also means that public interest litigation can be formally applied to the consumer field. In 2017, Article 55 of the Civil Procedure Law was amended and supplemented on the basis of the previous provisions (Article 58 of the Civil Procedure Law, which was revised in 2021, continues to be used), stipulating that "organs and relevant organizations prescribed by law" may file consumer public interest lawsuits. As can be seen from the above clauses, only the following subjects can file consumer public interest litigation in our country, namely the China Consumer's Association, the provincial Consumer's Association and the People's Procuratorate, which play a positive reference role in anti-monopoly civil public interest litigation. Referring to the relevant provisions of consumer public interest litigation, the second paragraph of Article 60 of the new "Anti-monopoly Law" stipulates that "if a business operator conducts a monopoly behavior and damages the social public interest, the people's procuratorate of a district city or above may file a civil public interest lawsuit with the people's court according to law". This kind of action mainly relies on procuratorial organs and administrative law enforcement to crack down on monopoly behavior, ignoring the participation of other forces. At the same time, the public's effective remedy way of protecting rights is relatively simple, which leads to the monopoly of some fields in our country becoming more and more serious[2].

According to our current law, the scope of proper subjects of anti-monopoly civil public interest litigation is greatly limited. In some cases, consumers, as direct victims, are the subjects who know the infringement process and situation best, and have the most urgent motivation to protect their rights. At the same time, they are also the eager and defender of social public interests. Therefore, the Chinese law directly excludes the most interested individuals to bring civil public interest litigation, which is obviously unreasonable. In fact, according to the 7th National Census report released by the National Bureau of Statistics on May 21, 2021, China is already a huge consumer market with a total population of over 1.4 billion. With the progress of The Times, the depth and breadth of people's consumption will continue to expand, the forms of anti-monopoly cases will tend to be diversified, become complicated; However, due to the limitation of legislation, there are only a limited number of subjects who can file anti-monopoly civil public interest litigation, so there must be some victims who cannot be solved by filing anti-monopoly civil public interest litigation, and finally, the legitimate rights and interests of victims cannot be effectively protected[3]. The maintenance of public interests is not only the responsibility of two subjects, and placing the maintenance of public interests on a few subjects can not meet the actual needs of the development of market economy. It is necessary and reasonable to further expand the channels of consumer rights relief.

3. Learning from foreign experience and thinking

Social organizations and individuals led by consumers' associations have become eligible subjects of anti-monopoly civil public interest litigation, which has long been precedents in legislation and judicial practice in many countries. In the overseas legal provisions, public interest litigation usually belongs to a type of group litigation or class litigation, that is, when a group brings a group lawsuit to safeguard the purpose of public interest, it belongs to the category of public interest litigation. Natural persons also have the right to initiate public interest litigation, so consumer organizations and individual citizens are important subjects to initiate public interest litigation.

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3.1. Legal provisions of the United States

As the first country to establish the anti-monopoly civil public interest litigation system, the United States improved the plaintiff qualification earlier, and the plaintiff subject with the qualification to file anti-monopoly civil public interest litigation is more extensive than other countries. As early as 1890, the Sherman Act stipulated the anti-monopoly public interest litigation system. According to Article 7 of the Sherman Act, the subjects of litigation include: natural persons, firms, companies and associations. The Clayton Act of 1914 restates it. In the United States, the "standard of legal rights" has evolved into the "standard of scope of interest" in anti-monopoly civil public interest litigation, which broadens the scope of the plaintiff's qualification and increases the types of subjects that can file anti-monopoly civil public interest litigation. All subjects who have been infringed by illegal monopoly behaviors can file lawsuits, and there is no administrative pre-procedure to prevent the government from filing private lawsuits[10].

3.2. Legal provisions of Germany

Germany began to use laws to regulate monopolistic behavior from the Prevention of Unfair Competition Law promulgated in 1908. In order to resist and punish the rampant unfair competition, the German government granted the right of litigation to some industrial groups. Later, with the gradual improvement of the law, the groups of other industries were also granted the right of litigation, but only for the monopolistic behavior in the industry. Since the amendment of the Anti-Unfair Competition Law in 1965, consumer groups have been given the right to file lawsuits against unfair trade, but the protection is limited to the rights and interests of consumers within the group. This provision was broken through in the draft amendment in 1977. That is, even if a monopolistic behavior that infringes on the rights and interests of consumers occurs outside a consumer group, the consumer group can still file an anti-monopoly civil public interest lawsuit against the monopolistic behavior in its own name. In other words, the legal interests protected by a consumer group are no longer limited to the group, but extended to the whole society. Later, Germany introduced the new rules of the European Union into the Law Against Competition Restriction, which took effect in 2005, which gradually improved and developed anti-monopoly civil public interest litigation.

3.3. The legal provisions of Japan

In 1947, Japan promulgated the Law on Prohibiting Private Monopolies and Ensuring Fair Trade, which is "a law designed to prevent and eliminate the evils of the concentration of economic power and ensure the healthy operation of economic functions under a highly developed free economic system". As the antitrust enforcement agency, the Fair Trade Commission has mastered most of the powers in the implementation process of the Prohibition of Monopoly Law, such as investigating, adjudicating and punishing monopolistic behaviors, as well as instituting anti-monopoly criminal proceedings. However, in Japan, private individuals have the right to file civil anti-monopoly lawsuits, but before filing lawsuits, the monopolistic behaviors targeted by private individuals must be judged illegal by the Fair Trade Commission, that is, private individuals can file lawsuits for damages only through the pre-trial mode. The pre-trial mode is not only set up when the private person brings the anti-monopoly civil action, but also other organs must go through this hard procedure before they can bring the lawsuit against the monopolistic behavior. Therefore, it can be seen that the Fair Trade Commission has a strict control over the antitrust civil public interest litigation. This system can indeed prevent the effect of excessive litigation, but also reduce the litigation burden of private subjects, so that they do not need to spend a lot of time and energy to prove the illegality of the monopolistic behavior sued.

In the process of designing the plaintiff qualification, the United States still adopts the dual mechanism of "government and private". Both the state authority and private person have the plaintiff qualification to bring lawsuits, and the government and private person are independent and supervise each other, so as to achieve the purpose of power checks and balances. The United States liberates private rights and encourages private participation in anti-monopoly activities, which is closely related to its highly developed market economic system. Thanks to the rich experience of traditional business guilds' self-discipline system, group litigation in Germany is relatively typical, that is, public interest groups with power and ability file lawsuits against monopolistic behaviors in their own name in accordance with legal provisions. By contrast, Japan has followed the U.S. in allowing private antitrust activities, but it still has a strong underlying tone of government intervention, which is reflected in the Fair Trade Commission. The pre-trial mode makes it necessary for private individuals to obtain

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permission from the Fair Trade Commission if they want to file anti-monopoly civil public interest litigation, which restricts the way for private individuals to safeguard their own interests to a certain extent[11].

The establishment of the State Administration of Supervision in 2018 made the anti-monopoly law enforcement function belong to the Anti-monopoly Bureau, and the unification of anti-monopoly law enforcement function enhanced the authority and efficiency of public enforcement. However, the revision of the new Anti-Monopoly Law only grants the people's procuratorate the qualification to file civil public interest litigation with the people's court in accordance with the law, which will undoubtedly have an unnecessary suppression effect on the private filing of anti-monopoly civil public interest litigation. And the German group litigation system is a reference for our country, for example, it gives Consumer protection associations or other social organizations the right to bring anti-monopoly civil public interest lawsuits.

4. The improvement of the subject of anti-monopoly civil public interest litigation

4.1. Improve the existing anti-monopoly civil public interest litigation procedures

In order to ensure that the work of procuratorial organs' anti-monopoly civil public interest litigation can be carried out smoothly and effectively, a reasonable procedural guarantee mechanism is essential.

4.1.1. Set up administrative pre-processing procedures

Due to the long period and high cost of litigation means, administrative means are more flexible and efficient, which can more quickly curb the occurrence of monopolistic behavior. Moreover, monopolistic behavior has sustained damage to public interests. In the process of litigation, consumers' interests and other issues may be continuously persecuted and cannot be solved. It is more in line with the original intention of protecting public interests to contain monopoly damage by means of administrative consultation and administrative coercion, which is the rationality of administrative pre-procedure. In addition, the anti-monopoly administrative law enforcement organ is more professional, so it should clarify the administrative pre-procedure of anti-monopoly procuratorial public interest litigation. When the public interest is damaged due to the weak law enforcement or inaction of the administrative organ and the relief effect cannot be reached, the procuratorial organ can safeguard the public interest through the civil public interest litigation procedure. In order to fulfill the supervision function of procuratorial organs and maintain the restrictive relationship between administration, procuratorial and judicial, so as to improve the efficiency of procuratorial organs to participate in public interest litigation[4].

4.1.2. Improving the right to investigate and collect evidence

In the face of monopoly cases, procuratorial organs should enjoy extensive, active and comprehensive investigation and verification rights. Due to the various types of monopoly cases and the existence of special factors, the current legislation and judicial interpretation of the burden of proof is inevitably inadequate. Although monopolistic enterprises are mostly industry giants, However, considering the nature of procuratorial organs' public power, litigation status, litigation ability and existing regulations and other factors, anti-monopoly procuratorial civil public interest litigation should still abide by the general provisions of "who claims, who provides evidence". Then procuratorial organs, as parties in civil public interest litigation, should perform the burden of proof with certain difficulty in order to win the judgment, such as monopoly agreement cases. Prosecutors need to prove the existence of the monopoly agreement, the loss suffered and the causal relationship between the loss and the monopolistic behavior; In cases of abuse of dominant market position, the prosecution needs to prove that the suspected monopoly has a dominant market position in the relevant market and there is abuse of dominant market position, so it cannot do without sufficient evidence, which requires the prosecution to obtain relevant evidence by exercising the right of investigation and nuclear evidence collection[5]. In the face of the complicated investigation difficulty of monopoly cases and the fact that most of the evidence is hidden by enterprises through extremely professional and secret means, it is difficult for the procuratorial organs to obtain evidence through normal channels. In the face of the infringement of public interests, the procuratorial organs should give priority to the protection of public interests, and the procuratorial organs should be given the power to take compulsory measures to investigate and collect evidence. In order to prevent the abuse of coercive measures, we should restrict them through certain supervision and restriction mechanism.

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4.2. Introduce new litigation subjects

The purpose of introducing civil public interest litigation system in the anti-monopoly field is to improve the efficiency of market competition, maintain the market fair competition order, protect the rights and interests of legitimate competitors and consumers, and ultimately safeguard the overall social economic order and public interests. Actively expand the scope of interest of litigation in the field of anti-monopoly, so as to include indirect damages, and allow the public to file anti-monopoly litigation for damage to social public interests or damage to their own indirect interests, so as to achieve social participation in anti-monopoly and comprehensive protection of social public interests. Compared with private interest litigation, Anti-monopoly civil public interest litigation is consistent with the common public interests of many social subjects which anti-monopoly law aims to protect. From the perspective of the plaintiff qualification of anti-monopoly civil public interest litigation, the plaintiff subject of anti-monopoly civil public interest litigation is more extensive than the "direct interested parties". It is no longer limited to the requirement that the plaintiff must be the procuratorial organ, but extends to the subject that is indirectly affected by the illegal monopoly behavior can be granted plaintiff qualification. For example, indirect buyers among consumers and operators and other people with related interests, individuals, social public welfare groups and others can be included in the scope of litigation subjects[6].

4.2.1. Individual

Individuals include natural persons, legal persons and non-legal organizations that bring anti-monopoly civil public interest litigation for the purpose of maintaining social public interest. According to the provisions of the Law of civil Action, many individuals who are indirectly affected by illegal monopoly behaviors, such as indirect buyers, will not be able to protect their own rights and interests through litigation in a timely and effective manner, and will make the subject of the implementation of monopoly behavior even worse for not getting due punishment, thus affecting the public interests of the whole society. Therefore, the plaintiff qualification of anti-monopoly civil public interest litigation must break through the original restriction of "direct interest relationship", expand to a certain extent within a reasonable range, and admit that subjects with "indirect interest relationship" can also file civil public interest litigation against illegal monopoly behaviors, to protect themselves and the public interest of the society. Individuals will not easily shake the determination of their own interests because of the advance of public power, and they are more sensitive to the existence of illegal monopoly behaviors that infringe their interests. Some people worry about whether individual egoism can play the important role of safeguarding social public interests. However, the development process of market economy has proved that, In order to safeguard their own interests, the supervision and civil litigation initiated by individual subjects against monopolistic behaviors not only do no harm to the public interest, but promote the stable development of market economic order, which is an important measure to safeguard the social public interest. Therefore, in anti-monopoly civil public interest litigation, as long as an individual citizen can prove in the litigation that the rights he claims have public welfare and that the public interests of the society are being or may be infringed by illegal monopoly behaviors, then the citizen is a qualified plaintiff in anti-monopoly civil public interest litigation. Individual participation in anti-monopoly civil public interest litigation can not only have a deterrent effect on the enterprises that carry out monopoly behavior, but also make up for the weakness of law enforcement agencies that cannot "cover all aspects" in the implementation of anti-monopoly law through public participation. Thus, the public's awareness of participating in the management of national affairs is also improved. Furthermore, it can cultivate the public legal consciousness and promote the construction of our socialist legal system. Of course, some people worry that extending plaintiff qualification to individual citizens will lead to indiscriminate litigation. In fact, the construction of anti-monopoly civil public interest litigation system does not only give plaintiff qualification to individuals, but also a series of complementary systems such as burden of proof system will follow[7]. We should not exclude individuals from anti-monopoly civil public interest litigation just because of the possibility of excessive litigation.

4.2.2. Social groups

Social public welfare organizations refer to those established through strict registration procedures for the purpose of actively seeking public welfare. This does not mean that public welfare organizations cannot make profits, but that profit should only be one of the means rather than the purpose of social organizations to maintain social welfare. Although the institutional protection of civil society rights is becoming more and more perfect, citizens themselves also actively protect their rights and interests from infringement, in the field of anti-monopoly civil public interest litigation, the power of individual

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citizens is weak, especially the party that carries out illegal monopoly behavior is often a leading enterprise with strong strength in a certain field, so it is naturally difficult to contend with individual ability. It is an effective way to realize the unity of personal value and social value to grant the plaintiff qualification to social public interest organizations in anti-monopoly civil public interest litigation. For example, if the plaintiff qualification is granted to the consumer association of a specific level, the consumer association will file anti-monopoly civil public interest litigation on behalf of the consumers when the illegal monopoly behavior causes damage to the interests of the majority of consumers. Social public welfare groups are usually composed of grassroots people, so they have close contact with the masses and better understand the needs of the masses. Social public welfare groups not only gather the strength of their members, but also safeguard the public interests of the society. A complete system of rules and regulations can also make the rights protection and litigation activities more professional, avoiding the blindness of private implementation. Social public interest organizations are composed of staff with anti-monopoly expertise and legal knowledge, which have obvious advantages in both social influence and professionalism. They can make up for the technical and cost deficiencies of individuals in filing anti-monopoly civil public interest litigation, protect the rights of victims, reduce the waste of litigation resources, avoid indiscriminate litigation, and improve the efficiency of litigation[8].

4.3. Improving the system of providing evidence in litigation

Rules of evidence often occupy a very important position in the process of litigation, and the degree of completion of the burden of proof directly affects the result of litigation. From the relevant rules can be seen, the present law of our country does not provide special burden of proof for the anti-monopoly civil public interest litigation. In anti-monopoly civil public interest litigation, the strength gap between the two parties is wide, and the monopoly enterprise as the defendant often occupies an absolute dominant position in a certain field. If the private person has to prove the illegal monopoly behavior of the defendant, the damage result and the relationship between the two, it is undoubtedly very difficult. First of all, Limited by financial strength and technical support, it is usually difficult for the plaintiff to prove the existence of operators' monopolistic behaviors in violation of the Anti-monopoly Law, such as reaching a fixed price transaction, market division, monopoly agreement, etc. Secondly, the consequences caused by monopolistic behavior are very complex, which may involve money, trading opportunities, market share and many other aspects, so the extent of damage is difficult to calculate. Finally, the listing of trading opportunities, the decrease of market supply and market share are not only caused by the monopolistic behavior, and it is extremely difficult for the injured party to prove that the injury is caused by the monopolistic behavior without the influence of other factors. Therefore, in order to protect the plaintiff's relief rights, in the evidence system of anti-monopoly civil public interest litigation, it is necessary to break through the traditional burden of proof distribution system of "who claims, who provides evidence" in the civil litigation law, and thus realize the protection of the vulnerable party. In view of the current distribution system of burden of proof, "reversal of burden of proof" has been a kind of legal regulation of protection of tendency which has been running for many years and has remarkable effect, so we can try to extend it to the field of anti-monopoly civil public interest litigation. Accordingly, the plaintiff only needs to prove the basic fact that the defendant's monopoly behavior will cause damage to the social public interest, and the rest of the burden of proof, such as the monopoly behavior does not exist, the monopoly does not endanger the social public interest and other exemptions, shall be borne by the defendant. Because our public awareness of anti-monopoly rights protection is still in the beginning stage, the litigation experience and litigation ability are short, the experience of German and Japan should be fully used. Taking Japan's evidence assistance measures as an example, when the plaintiff makes an application, the government needs to properly intervene, that is, the government should examine and confirm the illegality of the defendant's monopoly behavior, and the plaintiff can directly use the examination results as evidence in the trial process, which can greatly reduce the pressure of the plaintiff's burden of proof and balance the strength gap between the two sides[9].

As a specialized law enforcement agency, the Anti-monopoly Bureau has rich experience and professional knowledge and skills, and its professional opinions are very persuasive in judging whether monopolistic behavior restricts market competition, which also provides strong support for the plaintiff to bring anti-monopoly civil public interest litigation. Of course, the pre-execution procedure is necessary in Japan, but it can be set as non-essential in China. That is to say, the intervention of the administrative organ is not mandatory, and the plaintiff can freely decide whether to apply for the help of the anti-monopoly Bureau, so as to avoid the influence of the judicial independence caused by the excessive intervention of the administrative organ. It can also reflect the free will of the public to participate in anti-monopoly civil public interest litigation. The professional opinions and supporting

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materials provided by the Anti-monopoly Bureau can be used as the reference basis but not the only influencing factor for the court to decide the case, so as to ensure that the judicial power is not interfered by the executive power. Of course, considering the strength and status of state organs in functional exercise, evidence collection and other aspects, as well as the factor that their participation in litigation is bound to have a significant impact on the defendant, the state organs, namely the procuratorate, still need to adhere to the traditional burden of proof mode of "who claims, who provides evidence" when filing anti-monopoly civil public interest litigation to maintain the strength balance of both parties.

4.4. Improve the litigation incentive system

The reason for the establishment of the incentive system for anti-monopoly civil public interest litigation is that high litigation costs have become a major obstacle for weak plaintiffs to file lawsuits. The plaintiffs who file lawsuits often have to bear high litigation costs and also face greater litigation risks. Cases involving illegal monopoly behaviors often involve relatively complex professional knowledge and abilities that are difficult for ordinary people to master in the field of antitrust. Compared with powerful monopoly behavior perpetrators, plaintiffs are undoubtedly in a disadvantageous position in terms of human resources, material resources, financial resources and professionalism. Therefore, after considering the advantages and disadvantages, the plaintiffs often choose to give up the lawsuit, which makes the monopoly violators continue to carry out the illegal monopoly behavior unscrupulously, and finally leads to the further destruction of the market order. The illegal monopoly behavior not only infringes on the interests of a single individual, but also the public interest of the society as a whole, which is formed by the accumulation of many single legal interests. However, compared with the high cost to bring anti-monopoly civil litigation, the interests that an individual can gain from litigation are limited to making up for their own losses. That is to say, when individuals bring anti-monopoly civil public interest litigation, the litigation cost and the final income may be very disproportionate[12].

According to the current compensation system of the tort law, the compensation that plaintiff can get is limited to actual property loss caused by the illegal monopoly. Obviously, this kind of compensation liability can't motivate the victim to file and participate in anti-monopoly civil public interest action actively. As previously mentioned, the United States has established the "triple compensation of actual damage" standard emphasizing the full high compensation for the victims. By referring to this system, our country can introduce the punitive compensation system in the field of anti-monopoly civil public interest litigation, and the compensation is divided into two parts: Victims' compensation and anti-trust public welfare fund, which can both prevent indiscriminate litigation and reflect the public welfare nature of the compensation. Anti-monopoly civil public interest litigation is based on the fact that the interests of the vast majority of non-specific groups are harmed by illegal monopoly acts. However, it is precisely the uncertainty of the victims that makes it difficult to calculate the actual economic loss and determine the amount of damages. For this reason, the German method can be referred to, which directly takes the profits earned by monopoly enterprises as the calculation standard. In this way, the compensation amount cannot be calculated because the victim group is not specific, and the enterprise can be deterred from further infringing on the public interest. As mentioned above, it is proposed to divide the compensation of monopoly enterprises into two parts, one part is used to compensate the actual losses of victims, and the other part is used for anti-monopoly public welfare fund. Procuratorial organs and specific social organizations are not direct or indirect victims of illegal monopoly acts. They may file anti-monopoly civil public interest lawsuits based on one or a group of victims who suffer from the same illegal monopoly acts. Then these victims can obtain corresponding damages by proving their losses. However, due to the extensibility and extensibility of the damage caused by monopoly behavior, many victims do not even know that they have been infringed upon by monopoly behavior. Therefore, it is obviously unreasonable for these victims to file private interest or public interest litigation to ask the monopoly enterprise for compensation again after the lawsuit is over. At this time, the compensation which has been converted into anti-monopoly public welfare fund can be used for compensation, which not only compensates the loss of this part of the victims but also avoids the monopoly enterprise to bear unfair secondary compensation. By providing material compensation and substantial assistance to the public, they are encouraged to actively participate in anti-monopoly civil public interest litigation, jointly fight against illegal monopoly behaviors, and promote the realization of public interest of social groups with individual interests as the starting point.

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5. Conclusion

The revision of the new "Anti-monopoly Law" makes anti-monopoly civil public interest litigation officially come into people's vision, but as a new regulation, how to formulate a specific system and effective practice, is an urgent problem to be solved. From overseas experience, it has a long legislative and practical precedent to regard individuals and social organizations dominated by consumer association organizations as the proper subjects of anti-monopoly civil public interest litigation, and has achieved considerable results, and there are corresponding foundations in China. Therefore, the thesis thinks that we should introduce the new subject of litigation and improve the supporting evidence and incentive system, so as to promote the further development of our anti-monopoly civil public interest litigation.

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