

# Complementary or Contrary: The Clarification of the Path of Relief for Outsiders' Rights

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**Abstract:** *In order to remedy the rights of the outsiders who are harmed by the effective decisions, the Civil Procedure Law was amended in 2012 to add the third-party cancellation lawsuit, but the principle provisions of the law have not clarified the relationship between it and the application for retrial by the outsiders, and the practice of civil trial practice has led to a significant reduction in the value and function of the system. The article is introduced from an empirical case, through comparing the retrial system and the relevant provisions of the third-party cancellation claim. It aims to explore the differences between the two in procedural positioning and system concept by proposing that under the partyism litigation mode, the value function of retrial should be moved from supervision to relief. Meanwhile, in the relief-oriented litigation-type retrial mode, the rights of outsiders should be relieved through the following procedure: the integration of third-party cancellation claim and outsiders' application for retrial, the establishment of the supplementary principle of retrial, the construction of a retrial mechanism, and the establishment of a mechanism of retrial as well as a retrial. This article aims to discuss the following parts: retrials, establish the principle of retrial, construct the retrial, weaken the right of retrial, and refine the cause of initiation of proceedings.*

**Keywords:** *Third-party Cancellation, Retrial System, Remedy for Outsiders*

## 1. Introduction

These institutions are just when the norms make it possible to strike a proper balance between the conflicting demands of the various interests of social life. The image is based on justice, and the authority of the law depends on the people's heart. Justice is the last line of defense for fairness and justice, but the frequent occurrence of malicious lawsuits in practice has forced us to pay attention to the issue of relief for outsiders who are harmed by the effective decision. The Civil Procedure Law which was relieved in 2012 has added a new third-party cancellation of the claim. Therefore, the outsiders who are harmed by the effective decision can be relieved of the damage through two channels, namely, the public power supervision and litigation right relief. However, the system is designed to protect the interests of outsiders, but in practice, outsiders have difficulty in choosing between applying for retrial and third-party annulment, and the court also struggles with the parties' uncertainty - whether retrial and third-party annulment are sequential or parallel? Third-party cancellation of the results of the judgement "either wins or lose", there is always a losing party appeal, and then the losing party would continue to apply for retrial. In the process of repeated and prolonged litigation cycle, the interests of major changes, dispute resolution is stuck in a "dead cycle", and then comes the secondary disaster of litigation. Therefore, to clarify the boundaries between the third-party cancellation of claims and applications for retrial, the Civil Procedure Law has brought us a new topic.

## 2. The Sample: Third-Party Avoidance Claim and Application for Retrial of the Relief Overlap

Case 1: A sued to S District Court for the private loan dispute with B. The court ruled that B should repay the loan to A (hereinafter referred to as judgment A). After judgment A came into effect, A applied to the court for compulsory execution, requesting to seize and auction B's property. In the course of execution, the outsider Ding filed an execution objection to the court, claiming that before the fact of loan between A and B, B had transferred the property to him, and the two parties also sued to the S District Court for the dispute over the purchase and sale of the house, and the court ruled that the property belonged to Ding (hereinafter referred to as the judgment of B). The S District Court made an

execution ruling (hereinafter referred to as the ruling of C), which lifted the sealing of all the properties owned by B. A disagreed with the ruling of B, and filed a complaint to the S District Court. A appealed against the judgment and filed a third-party avoidance lawsuit to the S District Court, which rejected A's third-party avoidance lawsuit. A then filed an application for retrial as an outsider to the higher court of the S District Court, and indicated that it would file a complaint with the Procuratorate if its application for retrial or complaint was rejected. The case has been simplified and adapted in this article for ease of exposition.

The effect of a civil decision is not only limited to the parties, but sometimes extends to outsiders. Due to the existence of litigation fraud, malicious mediation and other behaviors, some effective decisions may be detrimental to the interests of outsiders. For this reason, the Supreme People's Court's "Interpretation of Several Issues Concerning the Application of the Trial Supervision Procedures of the Civil Procedure Law of the People's Republic of China" (hereinafter referred to as the "Interpretation of the Audit and Supervision") stipulates that outsiders may apply for retrial. The Civil Procedure Law was amended to provide for a third-party revocation claim. Since then, outsiders can claim to revoke the effective decision through the application for retrial or the third-party revocation claim. "The development of the civil litigation system is, on the one hand, to expand the scope of adjudicatory relief, and, on the other hand, to pursue the rationalization of procedures"[10]. Outsider remedies are increasing, but at the same time, does the expansion of the scope imply procedural rationalization? In the case mentioned above, A, as an outsider of judgment B, filed a third-party avoidance claim and a retrial application at the same time, can they both be accepted at the same time? In the third party to revoke the final hearing of the second instance to determine the dismissal of the claim, the outsider can follow the application to a higher court for retrial. As a kind of right of action, whether the third party revocation of the case must face the test of retrial procedures? Thus, the judicial practice is faced with an insoluble judicial confusion: an effective decision, multiple reviews, repeated trials, retrial procedures have become the usual procedures. Multiple reviews, complaints and visits are not separated, all these result in giving rise to retrial of the jurisdiction of the case of the multiplicity of the multi-level. This variety of jurisdictional intertwining is mainly manifested in the following: one is the upper and lower courts of the double management of the joint management of the same effective decision of the higher courts can accept the complaint and application for retrial, lower courts can also be ex officio or due to the third party's appeal, the lower courts may also be the case of the third party's application for retrial (see table 1). The legislator hopes to use the civil trial procedure to relieve the outsiders rights and interests, but finally paid the price of inefficient litigation. The result is: both the outsiders and the parties are at a loss. And the litigation process is lengthy and dragging without a final result. The judge is at a loss without knowing what the final decision is based on. A large number of referees are in a non-final state, seriously undermining the credibility of the judiciary. We cannot help but think: is it necessary to make a choice between trial supervision and the right to remedy, balancing the conflict between fairness and justice and res judicata?

Table 1: Analytical Chart of the Route of Remedy for the Rights of Outsiders

Ding After being informed that his legal interests have been prejudiced by the judgment of A.	
Third-party avoidance claim by Ding while the judgment is not yet enforced	Third-party avoidance claim by Ding while the judgment is not yet enforced

Table 1 is the analytical chart of the route of remedy for the rights of an outsider. This chart takes the case cited earlier as a sample for analysis, in which Ding can be recognized as an outsider in the execution case between A and B. In contrast, A is an outsider in the execution case between Ding and B.

### 3. The Interpretation: The Third Party to Revoke the Claim and Application for Retrial of the Legislative Status Quo

In theory, it clarifies the application for retrial by outsiders and the request for cancellation by the third party, explores the meeting point of the two, and then revises them in practice.

Table 2: Application for Retrial by the Clients

Legal basis	Articles 199 and 201 of the Civil Procedure Law
Court of jurisdiction	A higher court or the court of first instance
Referee effectiveness	Depends on the level of the original trial

The above Table 2 shows the application for retrial by the clients. The outsider's application for

retrial is shown in Table 3. And the outsiders in enforcement proceedings are shown in Table 4. The third party's revocation of the claim, the party's application for retrial of the institutional framework, the application period, the court of jurisdiction, all these procedures are consistent. But in the application period, the application subject matter and the court of jurisdiction are different; the author believes that the cause of the difference lies in the law on the right of action and retrial of the different value of the concept.

*Table 3: Outsider's Application for Retrial*

Mode of relief	Outsiders outside of enforcement proceedings
Grounds for filing	Claiming rights to the subject matter of execution determined by an effective instrument
Court of jurisdiction	A court at a higher level than the people's court that issued the original judgment, ruling or conciliation order.

*Table 4: Outsiders in Enforcement Proceedings*

Mode of relief	Outsiders in enforcement proceedings
Grounds for filing	Execution process, execution objection - execution objection rejected by ruling - dissatisfied with the ruling
Time Limit	Within two years from the date when the judgment, ruling, or conciliation has become legally effective.

The channels of retrial for outsiders include the application for retrial by an outsider, the initiation of retrial by the court ex officio, and the protest by the procuratorate. In other words, there are three main channels for the court to find out that an effective decision has harmed the rights and interests of an outsider. Firstly, the outsider files an objection during the execution procedure, and if it meets the reasons for the outsider to apply for a retrial, the retrial procedure will be initiated. Secondly, the court finds out that an effective decision has harmed the interests of a third party outside the case when it examines the execution procedure and initiates the trial supervision procedure ex officio. Thirdly, the outsider lodges a complaint with the Procuratorate, and then files a protest with the court, which then initiates retrial proceedings. However, whichever channel is used, it must be examined by the court to see if it meets the conditions set forth in the law. The application for retrial by the outsider is essentially based on the examination and determination by the court as the adjudicator and by the procuratorate as the legal supervisor that the original decision has been made in error and needs to be corrected. This system design highlights the traditional "supervision type as the core" retrial system of the color of authoritarianism, that is, the litigation claims of outsiders rely on the supervision of the litigation interests. On the one hand, the effective decision of the court's "binding force" by the supervision of the lifting of the substantial Res judicata has negative legal consequences, which are not a manifestation of the free will of the parties, but the result of externalized supervision. On the other hand, when supervision enters into retrial, it is inevitable that the supervisory claim will be taken into account as a factor in the adjudication, which may lead to a deviation from the parties' wishes in terms of the interests of the litigation.

*Table 5: Third Party Revocation Claim*

Article 56 of the Civil Procedure Law	Procedure of first instance
Within six months from the date	The court of first instance that rendered the judgment, ruling or conciliation order

Third part revocation claim is shown in Table 5. The third party's right to revoke a judgment is granted to the third party outside the case by the Civil Procedure Law. As long as the formal requirements are met, it can enter into the substantive review. It focuses on correcting the content of the judgment to the detriment of third-party interests; the original judgment is still legally binding on the parties. "Independent party outside the case of the third-party annulment can work together with the third-party interests of the prior remedial mechanism to constitute a complete third-party interests of the remedial system"[3]. The system improves the procedural safeguards for parties and outsiders. It also dredges up avenues of relief for outsiders through the right of action, and embodies the concept of private rights protection.

Through the aforementioned differences in appearance to see the essence, outsiders apply for retrial and third-party revocation of the value of the concept of the evolution of the realization of the differences in the way. The main function of the trial supervision, the main body of its power is the state organs. It focuses on the stability of the effective decision in the legal system as a whole. It also deals with the basic function of the relief of private rights, the main body of its rights of the parties.

Meanwhile, it focuses on the rights and interests of the parties to the protection of self-government.

#### **4. Analysis: The Value Orientation of Third-Party Avoidance Claims and Applications for Retrial**

In the litigation mode from authoritarianism to party-oriented litigation mode change, the value of retrial function should be changed from supervision to relief. Can the two seemingly opposite systems achieve the same results?

##### ***4.1 The Positioning of Retrial Procedures***

Modern judicial procedures should respect the procedural subject position of the parties, and the state should ensure the subjectivity of the parties in the operation of judicial procedures [5]. The parties are the ones who are directly affected by the *res judicata* of the decision, so the retrial procedure should be led by the parties. Otherwise, it will inevitably lead to the neglect of the people's judicial needs and disregard for the rights and interests of the parties. This situation would also lead to one-sided emphasis on supervision and misplaced public power and the litigation status of the parties. And therefore, it would lead to the correction of errors and shake the *res judicata* of the effective decision. Based on the protection of private rights of retrial system, retrial procedures should be positioned for the right to retrial mode:

##### ***4.1.1 Relief-oriented, supervision is complementary***

The review object of the trial supervision procedure is the legal rights and interests of the person who are harmed by the wrong decision. To solve the problem of judicial injustice, so the function of the judiciary determines the necessity of trial supervision and its direction [7]. Facing with the process of social and democratic political development as well as the socialist market economy's requirements for litigation procedures, the civil retrial procedures are appealed, thereafter the supervisory function is gradually weakened and replaced by the relief function. Supervision, which serves as the dominant retrial procedure, may lead to disorder or even nondiscrimination of the retrial. It would also result in a waste of judicial resources. Relief, as the dominant retrial procedure, emphasizes the parties to apply for retrial of the attribute of the right of action. It offers the rights and interests of victims of the corrective action of violations of the law. It also reflects the rights of the relief and protection of human rights. Therefore, relief should be the main function of the retrial system.

##### ***4.1.2 Complementary mode of relief***

The so-called complementary nature of retrial means that the retrial procedure is a complementary mode of relief in relation to other remedies such as the second trial [13]. Its initiation should be strictly limited. If a party is able to seek relief in these conventional ways, such as appeal and objection, but fails to do so, it will have the effect of disenfranchisement, i.e., it will not be allowed to raise it again by filing a complaint for retrial or an application for retrial [11]. The complementary nature of the retrial procedure regulates the efficiency of the parties' dispute resolution, which is conducive to giving full play to the procedural functions of the first and second instance, and also helps to strengthen the stability of *res judicata*.

##### ***4.1.3 Procedural remedies of the nature of retrial***

The retrial procedure is premised on the existence of the effective decision, compared with the first and second instance, it is at least the third or fourth hearing of the case. Prior to the initiation of this procedure, there has been a great deal of judicial activity in the case. The retrial nature is determined that the hearings, the manner of adjudication, and the proceedings of the retrial procedure.

#### ***4.2 Positioning of Third-Party Avoidance Claims***

The Civil Procedure Law sets the framework for the third party's revocation claim, which is different from ordinary claims from the legal provisions. The former is based on the cause of litigation or adjudication, while the latter is based on the fact of disputes or impaired rights. The object of litigation of the former is the court's definitive judgment that has taken effect, while the latter is the request for the substantive rights. The purpose of litigation of the former is the litigation claim of requesting the court to revoke the definitive judgment of the original trial. Therefore, the third party revocation of the claim and the retrial procedure is the functional position of the retrial of outsiders.

The use of the concept of retrial in the context of our country means precisely to transform the original lawsuit relief requirements into litigation claims, so an original request for the litigation system is very special or external factor of an organic part of the litigation [1]. In the relief-led litigation-type retrial mode, such as integrating third-party revocation claims into the retrial process in a gradual manner, this not only responds to the public's demand for substantive justice, but also maintains the authority of the effective decision, which is in line with the operational intent of the judiciary in resolving conflicts.

## **5. Equalization: Integration of Third-Party Revocation and Application for Retrial Conclusions**

Does the emergence of third-party rescission mean the completion of the historical mission of the outsider's application for retrial? This viewpoint is opposed to the viewpoint that "The difference between the two systems determines that the system of the layman's revocation of the system cannot simply replace the layman's application for retrial system." On the contrary, in the trial practice, we should comply with the spirit of the legislation of the civil litigation law, and fully respect as well as protect the right of the outsider. The application of the retrial aims to maximize the rights of the outsiders to safeguard their own legitimate rights. And this also demonstrates the impartiality, high efficiency and authority of the civil litigation system"[14]. In the author's view, the integration of the two is urgently needed in theory and reality, and the provisions on the application for retrial by outsiders should be repealed, so that the third-party revocation claim can be used as a type of retrial right of action.

### **5.1 Value Level - Conflict Avoidance**

The right of action type retrial mode achieved at the expense of the stability of civil litigation procedures and the stability of the effective decision. The impact of the decision is based on the finality of the supplementary relief to the parties who suffered damage to the rights of the effective error of the decision. Therefore, the fairness and the stability of the decision of the formation of a pair of contradictions. In order to realize justice and establish judicial authority, the third party withdraws the remedial procedure to change the wrong effective decision. Since the value and function of the two systems are the same, and why design of the system is causing confusion in the application of the program? Just as Edwards, the Chief Judge of the United States Federal Court of Appeals, said that "if the losing party believes that they can be in another place or another level of the court to file another lawsuit, they will never respect the court's decision, and stubbornly refused to implement the judgment against them. Endless litigation reflects, and at the same time incentivizes even more, a lack of respect for the court's decisions, thus seriously undermining the efficiency of the court system"[4].

### **5.2 Reality - Litigation Benefits**

In judicial practice, there are big differences between the courts on the outsider application for retrial in the scope and application conditions. So its application is not ideal. In the retrial system of the right of action transformation, the third party aims to improve the revocation of the third party to replace the outsiders to apply for retrial. In order to give the rights of the outsiders of the relief, but at the same time, reduce the impact of the res judicata on the effective decision, we should not interfere with the order of the civil litigation. The design of a strict procedure serves to prevent the abuse of the right of action. As the scholars said: "After the judgment has been determined, if the party's statement of dissent is recognized simply because of improper judgment or the discovery of new evidence, there is no end to the litigation. On the other hand, from the viewpoint of the ideal of making a correct and just judgment, it is also unreasonable to forbid the revocation of the determined judgment regardless of what kind of defects there are"[8]. In this way, the priority not only lies in respecting the autonomy of the right of appeal but also giving full play to the competence of the right of trial. Therefore, one of the urgent issues to be addressed is to reduce the number of repeated complaints by the parties and to mitigate the impact on the final outcome of the trial.

## **6. Reconstruction: the Rights of Outsiders Relief Path**

Third-party revocation claim is defined as a right to retrial mode of the outsider's retrial of the claim. It is dependent on the retrial system, the integration of the third-party revocation claim and the application for retrial to be perfected by the retrial system.

### **6.1 Conceptual Integration--Establishment of Retrial Supplementary Principle**

The current civil retrial procedures are constructed to take the concept "seeking truth from facts, correcting mistakes" as the principle. Improving the rights of outsiders relief will certainly construct the right to retrial mode. The idea of "correcting errors according to law" and "legal reality" both lay the cornerstone of the system. That is to say, for the parties to provide adequate procedural safeguards, the degree of correction of errors will be limited to the maximum extent of the right to relief in accordance with the law. "As long as the requirements of procedural safeguards are met, it is the parties who lose the opportunity to express dissatisfaction or re-disputes on both substantive and procedural aspects of the system, thus gaining legitimacy"[12]. Secondly, the principle of retrial supplementation is established to guide the parties to make full use of the rights and remedies within the trial system. If an outsider who could have participated in the original trial proceedings, or could have raised grounds for dissatisfaction with the original effective decision by way of objection, reconsideration or appeal, the case will not be supported, thus avoiding the chaos of retrial without appeal.

### **6.2 Institutional Design - Structuring Retrial Proceedings**

The right of action is the basis for the action for retrial. Giving the third party the right to revoke the original effective decision, and the revocation effect is limited to the part that adversely affects the third party, which not only takes into account the stability of the decision, but also realizes the protection of the interests of outsiders. The provisions of the civil procedure law on the third party to revoke the provisions of the law is relatively simple, so there are larger space for the improvement of the third party to revoke the right.

#### **6.2.1 Reasonable definition of third party**

According to Article 56(3) of the Civil Procedure Law, the eligible plaintiffs of the third party avoidance lawsuit shall be the third party with independent claim and the third party without independent claim. The third party's failure to take part in the original lawsuit shall be due to the reason that he/she cannot blame himself/herself. That is to say, the interests of this kind of appeal is "the outcome of the case with his legal interest", including the expansion of the judgment *res judicata*. It includes the formation of the judgment of the world, the reflex effect of the judgment of the adverse effect, and this adverse effect which considered to be material rather than spiritual. Finally, it also emphasizes that the third party cannot participate in the original lawsuit because of the inability to participate in the original litigation. Lastly, it was emphasized that the inability of the third party outside the case to take part in the original proceedings could not be attributed to his or her own fault.

#### **6.2.2 Trial procedures**

Civil Procedure Law on the third party aims to revoke the content of the trial and adjudication of the provisions, but the trial procedure is not clearly stipulated. The author believes that, based on the legislative purpose of the third party and the absence of express provisions of the law, the parties may apply for retrial of the relevant procedural provisions. First of all, the revocation shall be submitted to the application. The application includes the parties and their agents, the case number and content of the legal instrument. Secondly, the review period applies to a three-month period. There is a viewpoint that "The acceptance review period of the third party's revocation claim can refer to the application of Article 204(1) of the Civil Procedure Law regarding the three-month period for retrial review"[2]. The author agrees with this point of view. After all, the third party revocation of the claim is different from ordinary civil cases. Acceptance of the application helps to carry out the corresponding entity review. Besides a limit of three months period, there are special circumstances which are needed to be extended by the president of the court approved. Finally, the trial procedure need to be in accordance with reference to the retrial of the trial procedure. In Taiwan, the independent litigation type of the third-party revocation claim is set up according to the provisions of its procedural law. The retrial proceedings are allowed to use the provisions of the trial level proceedings. However, some scholars objected to this concept, arguing that "if the level of the court that originally determined the judgment is used to determine the level of the third party's revocation claim and the trial procedure, in fact, it only takes into account the interests of the parties in the original lawsuit as the defendant but not the interests of the third party as the plaintiff, which is obviously unfair to them. .... Therefore, regardless of the level of the court that originally determined the judgment, it should apply the first instance procedure when hearing the third party's revocation claim"[9]. In the author's opinion, the third party's revocation claim is a kind of after-the-fact relief mechanism, the procedure setting should not be too tedious. But they still should fully respect the third party's trial interest protection. It is appropriate to

refer to the practice in Taiwan, the third party's revocation claim can refer to the provisions of Article 207 of the Civil Procedure Law, and a separate collegial court for hearing.

### **6.2.3 Legal effects**

This mainly includes two aspects: first, the third party needs to revoke whether to stop the original effective referee execution. In Taiwan, a third party's rescission does not suspend the execution of the original judgment. However, the trial judge may decide to suspend the execution when he or she deems it necessary or when he or she applies for and provides a guarantee for such a suspension. In the author's opinion, the third party's revocation claim is essentially a retrial claim, so it can be referred to Article 199 of the Civil Procedure Law, which stipulates that the lawsuit does not stop the execution of the original effective decision. Outsiders (the plaintiff in the dismissal action) and interested parties (generally the defendant in the dismissal action) can reach an agreement under the auspices of the court. The applicant for the application can postpone the implementation of the execution of the application to suspend the enforcement Procedures. Secondly, the third party should withdraw the claim and the original party's claim.

In the author's view, based on our existing provisions. Article 42 of the Interpretation of the Trial Supervision provides that, if the original judgment is set aside by the relevant judgment, the outsider as well as the parties to the retrial shall be informed that they may bring a new lawsuit to resolve the relevant disputes. To avoid a major change in the legislation: if the third-party revocation claim is to revoke the original decision in its entirety, the original decision loses its validity as between the original parties. The original decision shall be terminated. And if it has already been executed, it may be executed and reversed at the request of the third party. If it is a partial revocation of the original decision, the revoked portion shall have legal effect on the original parties, and the unaltered portion shall remain effective as between the original parties. Whether the original party is required to file a new lawsuit after the rescission judgment is rendered in the rescission claim depends on the circumstances. The court shall not make a new decision on the matter in dispute between the original party in the rescission claim. Thirdly, the third party can appeal to the revocation of the appeal. The Civil Procedure Law does not provide for this, France and China's Macao region's legislative regulations have given the parties the right to appeal. Zheng Xuelin, president of the Supreme Court, points out that regardless of whether the original trial is the first or second instance, for the dismissal of the third party's revocation of the decision, as well as the dismissal of the third party's request for a judgment, the third party can appeal. Besides, for the revocation of the original decision, the original party can appeal [15]. The author agrees with the view that the retrial system should also provide relief for the corresponding procedural interests while providing relief for substantive interests. So it is necessary to provide adequate procedural safeguards for the third party and the party of the original trial.

### **6.3 Limitation of Rules - Weakening the Right of Public Power to Initiate Proceedings**

Since the right to retrial of outsiders is given the right to "appeal", it is not appropriate to set up too much public power retrial initiation right. Avoiding retrial initiation not only results in the proliferation of retrial review cases, but also being helpless to the stability of the effective decision. It is also not conducive to the stabilization of the effective decisions and the protection of the rights and interests of the successful parties. In the global context, if retrial proceedings are frequently initiated by the public power itself, which means the effective legal documents are constantly changed or revoked, it will inevitably result in the judgments of Chinese courts not being recognized or enforced by foreign courts.

Procuratorate, as a national specialized legal supervisory organ, it is inappropriate to over-involve the public power in the relevant field which originally belongs to the private rights [6]. So its right to initiate a retrial may be retained, but there should be certain limitations. Belonging to the scope of public rights, i.e., the national interests, social public interests are infringed upon and the state-owned property administrator does not claim the rights. The procuratorate shall exercise the civil right of action on behalf of the state and shall enjoy the civil litigation rights that are equally enjoyed by the opposing party. If the outsider does not initiate the right to retrial within the statutory period, and does not complain when the period expires, the procuratorate shall not intervene in the party's right to dispose of the outcome of the decision on its own initiative on the grounds of safeguarding the correct implementation of the law. The procuratorate may exercise its right to initiate a retrial in its capacity as a legal supervisory authority only if the court has committed a serious violation of the legal procedures during the trial.

## 7. Conclusions

This article discussed the refinement of the subject matter-regulating procedure. Outsider's rights relief can be achieved only through the third party. And the legal cause of the procedure should also be different from the parties to apply for retrial. Existing law has no specific provisions for outsiders who apply for retrial. There is a need to explore the civil procedure law of the third party revocation. Some scholars have suggested that the filing department of the people's court under appeal should review whether the lawsuit complies with the litigation elements. And in addition to the litigation elements stipulated in Article 56(3), it should also comply with the conditions stipulated in Article 119 and Article 124 of the Civil Procedure Law [1].

The author believes that, first of all, it is necessary to re-examine the conditions for the initiation of the right to retrial for outsiders. It is also urgent to change the practice of replacing the criteria for filing a retrial with the criteria for revising the judgment, and establish the concept of "possible error". This is not only conducive to straighten out the case and trial links, but also makes the procedure to bring a better reflection of the value of the pursuit of retrial proceedings. Secondly, it can further refine the judicial interpretations of the subject matter of the parties to apply for a retrial. Finally, the scope of the "fault" should be limited to the content of the substantive treatment and should not include the procedural content. The procuratorate may exercise its right to initiate a retrial in its capacity as a legal supervisory authority only if the court has committed a serious violation of the legal procedures during the trial.

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