

# Legal Regulation on the Abuse of Administrative Litigation Right ——Thoughts based on the "Lu Hongxia case"

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**ABSTRACT:** While the implementation of the case filing registration system and the promulgation of the new Administrative Litigation Law effectively solved the problem of "difficulty in filing a case", it also led to a surge in cases of abuse of administrative litigation rights. The abuse of administrative appeal has become a common judicial phenomenon. Although my country's current administrative legal system has specific regulations on the identification and regulation of the abuse of administrative litigation rights, it is still a legislative blank, but many courts have explored and responded to this. The publication of the "Supreme People's Court Gazette" on the first case in China to regulate the abuse of administrative litigation rights - the Lu Hongxia case has sparked heated discussions in theoretical circles on the conflict between individual rights and public resources. Through the induction and combing of typical cases of administrative abuse at home and abroad, foreign experience and the theory of civil litigation rights. The determination of the abuse of the administrative right of action can be divided into two levels: the precondition and the substantive judgment, which correspond to the establishment of the administrative right of action and the establishment of the abuse of the administrative right of action respectively. The constituent elements of the administrative right of appeal include the qualification of the parties and the interests of the appeal. The constitutive elements of the abuse of the right of action are composed of subjective malice and objective abuse of action. The identification process adheres to the logical line from the establishment of the administrative appeal right to the abuse of the administrative appeal right. After the abuse of the administrative litigation right is accurately determined, it can be regulated by dismissing the prosecution, passing on litigation costs, and fines according to the specific circumstances of the case. However, for the identification and regulation of the abuse of administrative litigation rights, judges should always strictly abide by the principles of prudence and reasoning, and exercise restraint to avoid the transgression of judicial power.

**KEYWORDS:** Abuse of Administrative Litigation, Lu Hongxia Case, Defining Standards, Regulatory Measures

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## I. Presentation of the question

Due to the extremely high difficulty of research, the theory of right to appeal is known as the "Goldbach's conjecture" in the legal circle. Based on the remedial nature of the right itself, once the substantive rights are violated, the obligee immediately enjoys the procedural right to file a lawsuit with the judicial authority and seek relief, that is, the right to sue<sup>1</sup>. In the field of administrative law, it is generally believed that the administrative right of action refers to the right of the administrative counterpart to bring a lawsuit to the people's court and request the people's court to exercise its judicial power to relieve its legitimate rights and interests<sup>2</sup> when the administrative act of the administrative agency violates the law and infringes on the private rights and interests. In the face of strong administrative power, administrative litigation is undoubtedly the last line of judicial defense for supervising administrative agencies. The administrative right of action is the passport to seek the final judicial relief, and it is the prerequisite for the administrative counterpart to enter the litigation procedure and carry out a series of litigation actions. Based on the particularity of the administrative agency that supervises the administrative litigation, the protection of the administrative litigation right is particularly important. For a long time, the problems of "difficulty in filing a case, difficulty in trial, and difficulty in

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<sup>1</sup> Zhang Xiaowei: "Regulations on the Abuse of Civil Proceedings", Sichuan University Law School Doctoral Dissertation in 2005, p. 8.

<sup>2</sup>The "right to sue" studied in this article only refers to the right to file a lawsuit and request to enter the trial procedure, and does not include procedural rights such as applying for recusal and applying for extension.

enforcement" in administrative litigation in China have been prominent, and administrative litigation rights have not been fully guaranteed. Relax the plaintiff's qualifications, expand the scope of accepting cases, etc.

In order to effectively protect the right of administrative litigation, in 2014, China formally reformed the court case acceptance system from the traditional case-filing review system to the case-filing registration system<sup>3</sup>. The implementation of the case registration system and the implementation of the new "Administrative Litigation Law" have strengthened the protection of administrative counterparts' administrative litigation rights. However, historical experience tells us that as long as people have power, they will inevitably abuse it<sup>4</sup>. The lowering of the threshold for administrative litigation has greatly increased the risk and possibility of administrative litigation rights being abused. The number of administrative litigation cases has achieved "blowout" growth<sup>5</sup>, and the frequency of administrative litigation rights being abused has risen sharply. The author searched the Chinese Judgment Documents Network with the keywords of "administrative cases and abuse of litigation rights", and there were 7,748 judicial documents in total. From 2012 to 2022, there were 8, 35, 102, 359, 591, 1373, 1783, 1692, 1576, 220 and 1 respectively.<sup>6</sup>

The 10th issue of "Supreme People's Court Gazette" in 2015 published the "Response to Lu Hongxia v. Nantong City Development and Reform Commission Government Information Disclosure" (hereinafter referred to as "Lu Hongxia case"), known as "the first case of abuse of administrative litigation rights in China's regulations"., for a while there were many debates, constant doubts, and mixed opinions. It was generally worried that the case in the communiqué would lead to the restriction or even deprivation of the administrative right of the administrative counterpart<sup>7</sup>. As the first case in China to regulate administrative litigation rights, the "Lu Hongxia case" involves two key legal issues: First, what is the abuse of administrative litigation rights? What are the constituent elements of the abuse standard of the administrative appeal right? Second, how to regulate the abuse of administrative litigation rights? Can the court limit the right of appeal of the administrative counterpart? Under the premise that our country has no legal provisions on administrative abuse of litigation, the "Lu Hongxia case" has aroused the thinking of the theoretical circles on the abuse of administrative litigation rights. However, "abuse of litigation is a concept that is rarely raised in the field of administrative law"<sup>8</sup>. "As of April 3, 2023, the author searched on China National Knowledge Infrastructure with the keyword "abuse of administrative litigation rights", and only retrieved 44 relevant documents. In this article, theoretical research on the abuse of the administrative right of appeal is still rare. Therefore, this article intends to try to extract the standard composition of the abuse of administrative litigation rights and the specific regulatory path to deal with the abuse of administrative litigation rights by summarizing and sorting out the typical cases of administrative abuse of litigation, foreign experience and theories of civil litigation rights.

## II. The actual state: the judicial practice of defining the abuse of the administrative right of

<sup>3</sup>"Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Advancing the Rule of Law" (2014)

<sup>4</sup> [France] Montesquieu: "On the Spirit of Law", translated by Xu Minglong, Commercial Press Publishing House, 2009 edition, p. 154.

<sup>5</sup>According to statistics from the Supreme People's Court, in the first month of the implementation of the case registration system, courts across the country registered a total of 1,132,714 cases, a year-on-year increase of 29% and a month-on-month increase of 4.93%. Among them, administrative cases had the largest year-on-year increase, with 29,924 registered cases, a year-on-year increase of 221% and a month-on-month increase of 84.5%;

From May 2015 to March 2017, the number of registered cases in courts across the country exceeded 31 million, a year-on-year increase of 33.92%. In terms of case types, civil cases increased by 25.15% year-on-year, and administrative cases increased by 54.24% year-on-year

<sup>6</sup>China Judgment Documents Network, Full Text Search: "Administrative Cases""Abuse of Litigation", [http://wenshu.court.gov.cn/list/list/?sorttype=1&number=&guid=cba28b9-cf56-ced01a4e-d492d9d820c8&conditions=searchWord+](http://wenshu.court.gov.cn/list/list/?sorttype=1&number=&guid=cba28b9-cf56-ced01a4e-d492d9d820c8&conditions=searchWord+3+AjlX++%E6%A1%88%E4%BB%B6%E7%B1%BB%E5%9E%8B:%E8%A1%8C%E6%94%BF%E6%A1%88%E4%BB% %B6&conditions=searchWord+QWJS+++%E5%85%A8%E6%96%87%E6%A3%80%E7%B4%A2:%E6%BB%A5%E7%94%A8%E8%AF%89%E6%9D%83)

[3+AjlX++%E6%A1%88%E4%BB%B6%E7%B1%BB%E5%9E%8B:%E8%A1%8C%E6%94%BF%E6%A1%88%E4%BB% %B6&conditions=searchWord+QWJS+++%E5%85%A8%E6%96%87%E6%A3%80%E7%B4%A2:%E6%BB%A5%E7%94%A8%E8%AF%89%E6%9D%83](http://wenshu.court.gov.cn/list/list/?sorttype=1&number=&guid=cba28b9-cf56-ced01a4e-d492d9d820c8&conditions=searchWord+3+AjlX++%E6%A1%88%E4%BB%B6%E7%B1%BB%E5%9E%8B:%E8%A1%8C%E6%94%BF%E6%A1%88%E4%BB% %B6&conditions=searchWord+QWJS+++%E5%85%A8%E6%96%87%E6%A3%80%E7%B4%A2:%E6%BB%A5%E7%94%A8%E8%AF%89%E6%9D%83), accessed April 12, 2017.

<sup>7</sup> Lan Tianbin: "The Controversy of 'Indiscriminate Litigation' after 94 Applications for Information Disclosure", Oriental Morning Post, March 5, 2015, page A21.

<sup>8</sup>Liang Yi: "The Debate on "Indiscriminate Litigation": Institutional Alienation and Correction of Information Disclosure", Journal of East China University of Political Science and Law, Issue 1, 2016, p. 177.

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The exercise of any right should have a reasonable boundary. Once the exercise of a right exceeds the legitimate limit and violates the original intention of the legislation and the gist of the right, the necessity of legal protection will be lost . Once the administrative right of appeal is abused, it will inevitably aggravate the shortage of judicial resources, increase the burden on administrative agencies , and waste public resources . Therefore, the abuse of administrative appeal must be accurately defined and regulated. China is a paradise for abusers <sup>9</sup>. Although our country has some relatively vague regulations on <sup>10</sup>the adoption of policies on the abuse of the right of action , from the perspective of positive law, our country's administrative legal system does not have a statutory standard for the definition of the abuse of the right of action . Fortunately, the hysteresis of the law has not affected the exploration and attempt of my country's judicial practice circles to identify and define the abuse of administrative litigation rights.

In the first case of China’ s regulatory abuse of administrative litigation rights— the "Lu Hongxia case" , the Gangzha Court of Jiangsu Province proposed four elements for the first time: "obvious lack of interest in litigation, improper purpose of litigation, principle of breaking the law of good faith, and unnecessary exercise of litigation rights" Define the abuse of administrative appeal. The publication of the Supreme People's Court Gazette further expresses the affirmation of the definition standard. Since then, other courts have , to a certain extent , referred to , continued, and embodied the criteria for the definition of abuse of administrative litigation rights established in the "Lu Hongxia case" in their trial practice .

However, it needs to be specifically pointed out that in order to define the abuse of administrative litigation rights, there are large differences in the constituent elements of the definition standards adopted by courts in various places. Even if the elements are the same, different courts cannot agree on the interpretation and determination of its content. Taking an overview of my country's current judicial practice, the standards for the abuse of administrative litigation rights proposed by local courts are basically based on the lack of interest in litigation, improper purpose of litigation (obvious intention of subjective abuse of litigation), violation of the principle of good faith, unnecessary exercise of litigation rights, and wasteful Public resources and abuse of the right to apply for government information disclosure are any combination of six constituent elements. In order to truly reflect the objective situation of the current judicial practice in our country, the author selected 11 typical cases, combined with specific judgments to analyze the aforementioned six constituent elements one by one, and summarized the problems existing in judicial practice in the definition of the abuse of administrative litigation rights.

**(1) Six constituent elements selected in judicial practice**

**Chart 1: In the typical cases of regulatory abuse of administrative litigation, the courts define the different components of the typical standards in my country**

the case	Constitutive elements of abuse of administrative right of appeal					
	lack of interest	The purpose of the lawsuit is improper (the intention of subjective abuse of lawsuits is obvious)	Violation of the principle of good faith	Exercising the right of appeal is not necessary	waste of public resources	Abuse of the right to request government information
Response to Lu Hongxia v. Nantong Development and Reform Commission on Open Government Information (referred to as "Lu Hongxia case") <sup>11</sup>	use	use	use	use	not adopted	not adopted

<sup>9</sup> Xu Guodong, "Prevention and Sanctions of Roman Civil Procedure Law against Abuse of Litigation and Abuse of Procedure—Also Discussing These Aspects in Major Countries (Regions) of the Latin French Family", Chinese and Foreign Law, No. 4, 2016, p. 884 .

<sup>10</sup>"Decision on Several Major Issues Concerning Comprehensively Advancing the Rule of Law" (2014) proposes to "increase the punishment of false litigation, malicious litigation, and unreasonable entanglement in litigation"; Fa Shi [2015] No. 8 proposes to "sanction illegal and excessive litigation, strengthen the construction of litigation integrity, standardize the spirit of the exercise of litigation rights, and stop false litigation, abuse of litigation rights, malicious litigation, and unreasonable litigation".

<sup>11</sup>Administrative Ruling (2014) Gang Xing Chu Zi No. 247 of the People's Court of Gangzha District, Nantong

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Guo Xingmei v. Chongqing Shaping District People's Government Information Disclosure Case <sup>12</sup>	use	not adopted	not adopted	not adopted	not adopted	use
Guo Xingmei v. Chongqing Municipal People's Government Administrative Reconsideration Case <sup>13</sup>	use	use	use	not adopted	not adopted	not adopted
Retrial of Guo Xingmei v. Chongqing Municipal People's Government Administrative Review Case <sup>14</sup>	use	no adoption	no adoption	no adoption	no adoption	no adoption
Xue Dianling, Sun Hongming, Shang Zhaohong v. Tianjin Municipal People's Government Information Disclosure Act Reconsideration Inaction Case (referred to as "Xue Dianling case") <sup>15</sup>	not adopted	use	not adopted	use	not adopted	not adopted
Fan Jianzhen v. Nantong Municipal People's Government Information Disclosure Case (referred to as "Fan Jianzhen Case") <sup>16</sup>	not adopted	not adopted	not adopted	not adopted	not adopted	use
Li Bangjun v. the Ministry of Public Security of the People's Republic of China on government information disclosure and administrative reconsideration (referred to as "Li Bangjun case") <sup>17</sup>	use	not adopted	not adopted	not adopted	use	not adopted
Zhang Hongling, Zhang Hongyan, Zhang Ji'an v. Beijing Haidian District People's Government Government Information Disclosure Case (referred to as "Zhang Hongling case") <sup>18</sup>	not adopted	not adopted	use	not adopted	not adopted	not adopted
Xu Yongqing, Xue Dianling and other 22 people v. Tianjin Binhai New Area Land Development Center government information disclosure case (referred to as "Xu Yongqing case") <sup>19</sup>	not adopted	use	not adopted	not adopted	use	not adopted
Li Shunyu, Zhou Zhongguo v. Xuzhou Yunlong District People's Government Administrative Expropriation Case (referred to as "Li Shunyu Case") <sup>20</sup>	not adopted	use	not adopted	not adopted	not adopted	not adopted
Huang Qinghong v. Qingxiu Mountain Management Committee, Nanning Municipal People's Government Compulsory Demolition and Administrative Compensation	Fact description, directly affirming the abuse of administrative litigation rights None of the constituent elements					

City, Jiangsu Province

<sup>12</sup>Chongqing Higher People's Court Administrative Ruling (2017) Yu Xing Zhong No. 231

<sup>13</sup>Chongqing Higher People's Court Administrative Ruling (2016) Yu Xing Zhong No. 34

<sup>14</sup>Administrative Ruling of the Supreme People's Court of the People's Republic of China (2016) Supreme Law Xingshen No. 2731

<sup>15</sup>Supreme People's Court Administrative Ruling (2017) Supreme Law Xingshen No. 530

<sup>16</sup>Administrative Judgment of the Higher People's Court of Jiangsu Province (2015) Su Xing Zhong Zi No. 00602

<sup>17</sup>Supreme People's Court Administrative Ruling (2016) Supreme Law Xing Shen No. 4414

<sup>18</sup>Administrative Ruling of the Supreme People's Court of the People's Republic of China (2016) Supreme Law Xingshen No. 4232

<sup>19</sup>Administrative Ruling of the Second Intermediate People's Court of Tianjin (2016) Jin 02 Xing Zhong No. 363

<sup>20</sup>Higher People's Court of Jiangsu Province (2015) Su Xing Su Zhong Zi No. 00538

Case (referred to as "Huang Qinghong Case") <sup>21</sup>	
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### 1. Lack of interest in litigation

In the trial practice of defining the abuse of administrative litigation right in our country, the lack of interest in litigation is the most frequently occurring element. Almost all courts regard "lack of interest in litigation" as an important basis for defining the establishment of administrative litigation right abuse. The interest of litigation means that the administrative counterpart who has been illegally infringed by the administrative organ has an interest that must be remedied through the judicial organ, and the relief of the judicial organ can produce actual value. For this constitutive element, the specific justification basis of the courts in various places is different, including the abuse of the right to obtain government information by the administrative counterpart; the inability to reasonably explain or prove that it has special needs such as production, life, and scientific research (hereinafter referred to as "three needs")<sup>22</sup>; To achieve other improper purposes; multiple harassment, repetitive, frivolous prosecutions, etc.

In the "Lu Hongxia case", the Gangzha Court held that the plaintiff's lawsuit stemmed from an application for government information disclosure. Due to the plaintiff's abuse of the right to apply for government information disclosure, objectively, he does not enjoy the benefit of litigation; in the "Guo Xingmei v. The specific legitimate rights and interests involved in the government information disclosure lawsuit filed; in the (2016) Supreme Law Xingshen No. interests"<sup>23</sup>. In the "Xue Dianling case", the court of retrial held that Xue Dianling and the other three actually used government information to open the lawsuit to achieve the purpose of expanding influence and reflecting petition appeals, so they did not have the benefit of court relief.

### 2. The purpose of the lawsuit is improper (obvious intention to abuse the lawsuit subjectively)

The legitimate purpose of the administrative counterpart to file an administrative lawsuit is to obtain relief from the judicial organ and protect its legal rights and interests that have been infringed. The improper purpose of litigation (obvious intention of subjective abuse of litigation) is reflected in the definition standard adopted by some courts. Its content mainly includes putting pressure on the government, failing to provide sufficient evidence to explain the "three needs" and so on.

The author will focus on the court practice in which this element is listed separately. In the "Lu Hongxia case", the trial court held that the plaintiff, Lu Hongxia, had a dispute over her interests in demolition, so she filed a government information disclosure lawsuit in order to seek to exert pressure on the government and related departments and seek personal gain; in the "Li Bangjun case", the Supreme People's Court It is stated in the judgment that Li Bangjun filed a government information disclosure lawsuit in an attempt to obtain evidence that the Ministry of Public Security refused to accept his administrative reconsideration. In essence, he wanted to restart the dispute resolution process that had ended, and the purpose of the lawsuit was improper. In the "Li Shunyu case", the trial court held that the plaintiff knew that the disputed house did not belong to his legal property according to other final judgments, and the subjective intention to abuse the right of appeal was obvious.

### 3. Violation of the principle of good faith

As an overarching legal principle, the principle of good faith requires that the administrative counterpart must abide by the moral bottom line when exercising the right of appeal, be good-hearted and loyal, and not harm the legitimate rights and interests of others or the public interest. There are inconsistencies in the understanding of the status of "violation of the principle of good faith" by various courts. The vast majority of courts did not interpret and affirm the violation of the principle of good faith as an independent constituent element of the abuse of administrative litigation rights in the judgment documents, but only regarded it as a trial conclusion, often expressed as "the behavior violated the principle of good faith", "The plaintiff's lawsuit clearly violates the basic requirements of litigation integrity," etc.

What is more special is that the trial court of the bulletin case "Lu Hongxia case" regarded the principle

<sup>21</sup>Administrative Ruling of the Supreme People's Court of the People's Republic of China (2017) Supreme Law Xingshen No. 8565

<sup>22</sup>Article 13 of the "Regulations on the Disclosure of Government Information" stipulates: "In addition to the government information voluntarily disclosed by administrative agencies as stipulated in Articles 9, 10, 11, and 12 of these regulations, citizens, legal persons or other organizations may also According to the special needs of their own production, life, scientific research, etc., they can apply to the departments of the State Council, local people's governments at all levels, and local people's government departments above the county level to obtain relevant government information."

<sup>23</sup>See note 14, page 80.

of good faith as a separate constituent element. People filed at least 36 administrative lawsuits, and the reasons for the lawsuits were highly similar, and the content of the multiple lawsuits filed repeatedly was the same or similar. Judging from the number of lawsuits and the contents of the lawsuits, they were extremely harassing, venting anger, and trivial in nature, thus violating the The principle of honesty and good faith; in the "Guo Xingmei v. Chongqing Municipal People's Government Administrative Review Case", the court of second instance held that Guo Xingmei had wasted judicial resources and therefore violated the principle of good faith; the retrial court of "Guo Xingmei v. Chongqing Municipal People's Government Administrative Review Case" Based on the fact that Guo Xingmei's repeated lawsuits are harassing and trivial, it is determined that Guo Xingmei violated the principle of good faith <sup>24</sup>. In the " Huang Qinghong case ", the Supreme People's Court determined that Deng Nianguang had abused his right of action because he acted as an agent in several related cases at the same time and led the provision of false materials. In its judgment, the court did not mention any constituent elements. However, the author believes that the determination of this case is still based on the consideration of the principle of good faith.

#### **4. It is not necessary to exercise the right of appeal**

The academic circle generally believes that the two basic points of the interests of litigation are the necessity and effectiveness of exercising the right of litigation. Therefore, the lack of necessity to exercise the right to sue is essentially related to the lack of interest in suing. The author believes that it is unnecessary to list the necessity of exercising the right of appeal as a constituent element. However, in judicial practice, many courts still regard it as one of the independent constituent elements to define the abuse of administrative litigation power. In the "Lu Hongxia case", the court held that it was unnecessary for the plaintiff to insist on filing despite the court's explanation that he clearly knew that his petition would not be supported by the court; The defendant insisted on appealing and applying for retrial after knowing that his lawsuit was a repeated lawsuit, which violated the necessity of exercising the right to appeal. In the "Xue Dianling case", the retrial court also considered that the applicant's litigation in this case could not resolve the actual dispute over the administrative demolition of the entire village as an independent constituent element and determined that the administrative right of action was abused.

#### **5. Waste of public resources**

Taking the waste of public resources as one of the elements to define the abuse of the administrative right of action is essentially evaluating whether the exercise of the right of action by the administrative counterpart has resulted in damage. The role of wasting administrative resources and judicial resources in defining the abuse of administrative appeal varies from case to case. Due to the inherent nature of administrative resources and judicial resources that are difficult to measure as public interests, the waste of administrative resources and judicial resources is mostly used as the proof of other elements or the negative effects of the abuse of administrative litigation rights, rather than independent elements. For example, the "Lu Hongxia case" regards the waste of public interests as the justification for the constituent element of "the exercise of the right to appeal is not necessary"; the "Xue Dianling case" regards the waste of judicial resources as the incidental negative impact of the abuse of the administrative right of appeal . Few courts have made it a constituent element.

Even if administrative resources and judicial resources are wasted as independent constituent elements, the courts still lack the justification and reasoning for the specific subdivided constituent elements. Most of the verdicts are similar to those of the Tianjin No. 2 Intermediate People's Court in the "Xu Yongqing case" . The plaintiff's prosecution wasted administrative and judicial resources, so the abuse of administrative litigation rights was established; the same statement can also be seen in the "Li Bangjun case", where the plaintiff The abuse of litigation was a waste of public resources, and at the same time constituted an abuse of the right to apply for information disclosure and the right to appeal.

#### **6. Abusing the right to apply for government information disclosure**

Due to the inherent expansion of rights, any form of rights has the possibility of being abused. Whether it is the right to apply for government information disclosure or the right to appeal, it is inevitable that they will be abused. Under the background that government information disclosure litigation has become a "hardest hit area" for the abuse of administrative litigation rights, we must clarify the relationship between the abuse of government information disclosure application rights and the abuse of administrative litigation rights. The right to apply for government information disclosure and the administrative appeal right in government information disclosure litigation are two different rights. The two occurred in two different procedures of applying for government information disclosure and filing an administrative lawsuit. Therefore, the abuse of the right to

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<sup>24</sup>See note 14, page 80.

apply for government information disclosure does not necessarily lead to the abuse of the administrative right of appeal. The abuse of the administrative right of action can only be established when the administrative counterpart has repeatedly filed trivial, similar, and frivolous lawsuits to the people's court after abusing the right to apply for government information disclosure. From a legal point of view, the establishment of the abuse of the right to apply for government information does not necessarily lead to the establishment of the establishment of the abuse of the right of administrative appeal.

However, in trial practice, there are many cases where administrative counterparts confuse the abuse of government information application rights with the abuse of administrative appeal rights. In the "Fan Jianzhen case", most of the judgment documents of the Higher People's Court of Jiangsu Province revolved around the appellant's long-term, large-scale applications for government information disclosure and abuse of the right to apply for government information disclosure without justified reasons. The court also considered that the appellant's abuse of rights should not be protected by law, and dismissed the appeal. This constitutive element was also adopted in the "Guo Xingmei v. Government Information Disclosure Case of the Shaping District People's Government of Chongqing City", the trial court held that the plaintiff's uninterrupted, massive and random applications for government information disclosure constituted an abuse of the right to apply for government information disclosure and abuse of administrative litigation rights.

## **(2) Problems in trial practice**

It is irrefutable that the judicial practice of defining the abuse of administrative litigation rights in the actual state provides a direction for us to explore the specific elements of the definition standard. However, through a detailed analysis of the judgment documents of 11 typical cases, the author believes that the problems exposed at the level of judicial practice are more thought-provoking and thought-provoking.

### **1. Surface problems**

The author summarizes the superficial problems in the definition of the abuse of administrative litigation rights in judicial practice as four major aspects: there are elements but no support; there are facts but no elements;

First of all, when specifically identifying each constituent element, many judicial organs stopped at proposing specific constituent elements. The constituent elements without supporting basis are like water without a source and a tree without roots, which is actually hard to convince the public. For example, in the (2016) Supreme Law Xingshen No. 2731 Judgment Document, the Supreme People's Court in charge of the retrial directly stated that Guo Xingmei's subjective intention to appeal was obvious; and in the "Li Bangjun Case", the court had no opinion on the independent constituent element of wasting public resources. illustrate.

Secondly, as the opposite of the first appearance, the phenomenon of having facts but not essential elements is also very prominent. Among them, the "Huang Qinghong case" is particularly prominent. The trial court directly determined that Deng Nianguang had abused the right of action because of the fact that Deng Nianguang served as an agent in several related cases at the same time and provided false materials, and avoided discussing the specific constituent elements.

Thirdly, the justifications of the constituent elements intersect each other, and the boundaries are blurred. The entire court system has a mixed understanding of concepts such as the principle of honesty and trustworthiness, the interests of litigation, and the necessity of exercising the right to sue. Specifically, the same factual basis can be used as the justification of different constituent elements, and different constituent elements can support each other. For example, the Supreme People's Court held that Guo Xingmei's harassing and repeated prosecutions lacked the interests of litigation and violated the principle of good faith<sup>25</sup>. Another example is the waste of public resources: in the "Lu Hongxia case", it is the factual basis for determining that the right to appeal is not necessary, and in the "Guo Xingmei v. Chongqing Municipal People's Government Administrative Reconsideration Case", it is the basis for violating good faith. The improper purpose of the lawsuit can also be used as an example. The improper purpose of the lawsuit can be used as a constituent element alone, or it can be used as factual evidence of the lack of the benefit of the lawsuit.

Finally, the combination of constituent elements is quite arbitrary. Exhibit 1 lists the unique combinations of constituent elements in 11 typical cases, and the author will not repeat them here. When the standards for defining the abuse of administrative litigation rights lack stability, it is really difficult to talk about exporting fair and just legal products.

### **2. Deep problems**

The outbreak of all superficial problems is rooted in the lack of legal basis and judgment basis in

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<sup>25</sup>See note 14, page 80.

judicial trials . "Trial according to law" is the basic principle established by the Constitution of our country, and the smooth progress of trial activities must rely on legal basis and theoretical support. However, if there are no specific legal norms as the basis for judgment , it is difficult for the judicial power to exert its function of stopping excessive litigation and maintaining fairness and justice <sup>26</sup>. Under the background that the definition standard of the abuse of administrative litigation right in our country is a blank in the legislation, a systematic, detailed and reliable legal basis is particularly important.

Whether it is the " Lu Hongxia case " or other classic cases that the author has sorted out, the judges seem to be consciously seeking a legal basis for the judgment conclusion . But most of them are limited to such slogan -like expressions , such as "according to the spirit of legislation", "the proper meaning of judicial power is to protect the right of administrative litigation and stop administrative abuse of litigation " and so on . Since then, some vague legal provisions have been listed after the judgment documents <sup>27</sup>.

All the courts did not explicitly propose or cite any specific legal norms to explain the reasons for selecting specific elements to determine the abuse of the administrative right of action , but only "blindly" and "arbitrarily" exercising discretion. The lack of a legal basis not only leads to chaos in the identification of specific elements, such as elements but no support, facts but no elements, the basis and process of justifying elements intersecting each other, and the combination of elements being unstable. Improperly expanding the scope of the subject of abuse of litigation, ignoring the logical order of the establishment of the right of litigation and the establishment of the abuse of the right of litigation, and confusing the subjective and objective aspects of the abuse of the right of litigation. For example, some judges confuse the establishment of the right of appeal with the establishment of the abuse of the right of appeal. After some courts have judged that the administrative counterpart has abused the right to sue, they propose that the administrative counterpart does not have the qualifications of the plaintiff at all and does not meet the conditions for prosecution. In the context of the general "high prosecution conditions", if the requirements for prosecution are not met, the right to sue is of course not established. There is a logical misunderstanding in affirming the abuse of the right of action first, and then denying the establishment of the right of action. For example, in the "Li Shunyu case", the trial court directly equated the abuse of litigation rights with the plaintiff's subject qualification.

focus on the Lu Hongxia case and take into account other similar cases to deeply review the actual shortcomings and irrationality of the current trial practice in the process of defining the selection and determination of the constituent elements of the abuse of administrative litigation rights , and reflect on and reconstruct the definition The due standard of the administrative appeal right.

### **3. The state of what should be: the definition standard of the abuse of administrative litigation rights**

The first step in rethinking and reconstructing the standard for defining the administrative right of action should be to establish the legal basis and theoretical basis. As mentioned above, in the judgment documents, the courts did not put forward any legal basis or introduce any legal norms in the process of defining the abuse of administrative litigation rights .

But this does not mean that we cannot find the legal basis to define the abuse of administrative appeal. It is worth considering that the right to sue exists in any type of judicial proceedings. The civil litigation right and the administrative litigation right belong to the branches of the litigation right in specific fields. The prosperity of the theory of right of action in the field of civil procedure law does not mean that the theory of right of action is exclusive to the field of civil procedure. On the contrary, in the study of the administrative right of action, the litigation theory in the field of civil litigation can provide us with the necessary foundation and useful reference. Moreover, my country's administrative litigation has always had a tradition of referring to civil litigation. Before the promulgation of the "Administrative Procedure Law" in 1989, administrative cases in our country were tried with reference to the relevant provisions of the Civil Procedure Law. Because, we can boldly turn to the theory of the right of action in the field of civil litigation for the purpose of exploring the legal basis for solving the problem of the abuse of the administrative right of action.

In the author's opinion, the identification and definition of the abuse of the administrative right of action should be divided into two levels of preconditions and substantive judgments , which correspond to the establishment of the administrative right of action and the establishment of the abuse of the administrative right

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<sup>26</sup> Zhang Jiansheng: "Determination of Abuse of Litigation in Administrative Litigation——Commentary on Lu Hongxia v. Nantong Development and Reform Commission Open Government Information Response", *Jiaotong University Law*, Issue 2, 2017, p. 176 .

<sup>27</sup>Including but not limited to Article 13 of the "Civil Procedure Law" on the principle of good faith, Article 101 of the "Administrative Procedure Law" on the application of procedures by reference, and the Supreme People's Court on several issues concerning the implementation of the "People's Republic of China Administrative Procedure Law" Interpretation of the provisions of Article 44 on dismissal of prosecution.



of action respectively . Only when the administrative counterpart meets the preconditions for the establishment of the administrative right of action can the court need to make a substantive judgment on whether the administrative right of action has been abused . The definition of the abuse of the administrative right of action by the judiciary should follow the logical line of whether it has the right of administrative action—whether to file an administrative lawsuit—whether it abuses the right of administrative action. As one of the first countries to discuss the abuse of the right of action, French courts strictly follow the logic of judgment from right of action to abuse of right of action <sup>28</sup>.

The theory of right of action originates from Roman law and flourishes in the field of civil procedure. The establishment of the right to sue is the basis and premise of suing. From ancient times to the present, the field of civil procedure law has never stopped exploring and arguing about the nature of the right of action, and has formed more than ten theories and schools one after another. The nature of the right of action has also changed from the theory of private right of action to the theory of public law right of action. The theory of the right of appeal in public law holds that the right of appeal is no longer the substantive claim to the infringer, but the procedural claim to the state for public relief. <sup>29</sup>The theory of the right of appeal in public law has been further developed into the theory of specific right of appeal, the theory of abstract right of appeal, the theory of the right to request the judgment of this case (also known as the right to request dispute resolution) and the theory of the right to request judicial actions.

As the first institutional human right <sup>30</sup>, the right to appeal must have certain elements to identify and judge whether the parties have the right to request the court for judicial relief. However, among the above theories, only the theory of the specific right of appeal and the theory of the right to request the judgment in this case involve the discussion of the constituent elements of the right of appeal. The specific theory of the right of action holds that the right of action is the right of the plaintiff to request the public power of the state to <sup>31</sup>make its own judgment in favor of <sup>32</sup>the lawsuit. (also known as the right to request dispute resolution) believes that the right to sue is not the right of the parties to ask the court to make a successful judgment, but the right to ask the court to hear. The decision to win or lose the lawsuit is decided by the court <sup>33</sup>. It consists of two elements.

The author believes that the constitutional elements of the right of action put forward by the doctrine of the right to claim for judgment (also known as the right to claim dispute resolution) in this case are more reasonable. The reasons are: first. The theory of specific right of action holds that both parties have the right to request the court to make their own judgment in favor of the lawsuit, but in a lawsuit aimed at settling disputes, the winning party and the losing party are together. According to this theory, only the winning party has the right to sue, and the losing party has no right to sue at all. But judges can only ascertain whether the substantive rights are real only during the proceedings, and only at the conclusion of the proceedings can they determine whether the parties win or lose. Therefore, it is extremely contradictory and unreasonable to regard the existence or non-existence of substantive rights as the constituent elements of the right of action and the judgment of the judge as the criterion for the establishment of the right of action before the litigation procedure where the substantive facts cannot be ascertained. Secondly, the theory of specific right of action belongs to the theory of dual right of action. It believes that right of action includes substantive rights and procedural rights, ignoring the huge difference between substantive attributes and procedural attributes, which greatly impacts the theoretical cornerstone of civil procedure law. If all disputes must take the existence of substantive rights as the constituent elements of the right of action, it will undoubtedly greatly reduce the scope and space of judicial relief. Moreover, in terms of laws, practices, and theories around the world, most countries and regions maintain that the two elements of eligibility and interests of the parties constitute the right to sue <sup>34</sup>.

Here I need to make a brief explanation. Influenced by the civil law of the Soviet Union, our country takes the theory of dual rights of action as a general theory, and maintains that the right of action includes procedural attributes and substantive attributes. The procedural attribute shows that the plaintiff has the right to bring a lawsuit to the court and seek judicial relief when the interests are damaged, and the defendant has the

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<sup>28</sup>See note 1, page 77.

<sup>29</sup>Xiang Qingmei : " On Civil Litigation ", China University of Political Science and Law School of Procedural Law 2006 Doctoral Dissertation, p. 6.

<sup>30</sup>Mo Jihong : " The Logical Basis of Modern Constitution ", Law Press, 2001 edition, p.301.

<sup>31</sup>Han Liping: "Constituent Elements of the Right to Appeal", Heilongjiang University Law School 2014 Master Thesis, p. 15.

<sup>32</sup>Hu Yi : " Investigation on the Concept of Prosecution Right and Its Elements ", 2006 Master's Thesis of China University of Political Science and Law School of Procedural Law , p . 2

<sup>33</sup>[Japan] Kaneko I, Takeshita Morio: "Civil Procedure Law", translated by Bai Luxuan, Law Press, 1995 edition, p. 4.

<sup>34</sup>Jiang Wei, Shao Ming, Chen Gang: "Research on the Right of Civil Litigation", Law Press, 2002 edition, pp. 167-168 .

right to reply; the substantive attribute shows that both parties have the right to request the court to rule in favor of themselves. However, this article believes that the theory of dual rights of action is essentially the same as the theory of specific rights of action, both of which avoid the relationship between procedural law and substantive law, and thus go against the task of the theory of right of action.<sup>35</sup> The distinction between procedural law and substantive law is the progress of human history. As a procedural claim right, the right of appeal is an irrefutable property of procedural protection. The right to sue is the passport to enter the litigation procedure and conduct litigation. Substantive legal relations can be dealt with in trial activities only if one has the right to sue first. The right to appeal should be a procedural right, not a substantive right to request. Because, the author will refer to the application of the right to appeal for judgment in this case, and regard the eligibility of the parties and the interests of the appeal as the two constituent elements for the establishment of the administrative right of action.

## **(1) Precondition - the establishment of the administrative right of appeal**

### **1. The parties are qualified**

Eligible parties, also known as legitimate parties, refer to parties who have the qualifications to file a lawsuit in their own name in a specific lawsuit. Based on the unique "property of the people suing the government" in the Administrative Litigation Law, the research on the eligibility of the parties in the administrative litigation should focus on the eligibility of the administrative counterpart. According to the first paragraph of Article 25 of the new "Administrative Litigation Law"<sup>36</sup>, in administrative litigation, as long as there is an interest in the administrative action taken by the administrative agency, it is eligible to be a party, including the administrative counterpart and the administrative party whose actual rights and obligations are affected. relevant people. Specific to the government information disclosure litigation, the standard of eligibility of the parties is also consistent<sup>37</sup>.

In the "Lu Hongxia Case", Lu Hongxia applied to the defendant Nantong Municipal Development and Reform Commission, requesting the defendant Nantong Municipal Development and Reform Commission to disclose the "project approval document for the greening project on the west extension of Changping Road". Lu Hongxia, of course, became the administrative counterpart of the specific administrative act when she filed the application, realizing the eligibility of the party concerned.

So in the "Huang Qinghong case", is it appropriate for the court to make a breakthrough and include the entrusted agent as a qualified party to the abuse of litigation? the answer is negative. As mentioned above, the eligible parties to administrative litigation should have an interest in the administrative action being sued. An entrusted agent is a litigant who is entrusted by the counterpart to participate in the lawsuit in the name of the administrative counterpart. The result of the litigation shall be borne by the administrative counterpart. In other words, whether the plaintiff wins or loses in the administrative lawsuit, it will not affect the rights and obligations of the entrusted agent. It is true that the entrusted agent shall exercise the power of agency legitimately and reasonably within the scope of authorization. An entrusted agent who violates the law in the process of agency should be negatively evaluated by the law. Article 59 of China's "Administrative Litigation Law" clearly stipulates that the court may admonish, order to repent, impose a fine of less than 10,000 yuan or detain the entrusted agent Deng Nianguang for less than 15 days for providing false certification materials. criminal responsibility<sup>38</sup>. However, the trial court of the "Huang Qinghong Case" only determined that Deng Nianguang had abused his right of action based on the fact that Deng Nianguang had acted as an agent in several related cases to assist in providing similar false proof materials, which obviously expanded the scope of legitimate parties to the administrative right of action. .

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<sup>35</sup>Zhang Jiahui: "The Response to the Meaning of Litigation——Theoretical Basis of the Relationship between Procedural Law and Substantive Law", Law Review, No. 2, 2000, pp. 61-62.

<sup>36</sup>Article 25, Paragraph 1 of the "Administrative Litigation Law": "The counterpart to the administrative action and other citizens, legal persons and other organizations that have an interest in the administrative action have the right to file a lawsuit."

<sup>37</sup>Paragraph 2 of Article 33 of the "Government Information Disclosure Regulations": "Citizens, legal persons or other organizations believe that administrative organs

If a specific administrative act in the information disclosure work infringes its legitimate rights and interests, it may apply for administrative reconsideration or file an administrative lawsuit according to law. "

<sup>38</sup>Article 59 of the "Administrative Litigation Law": "The people's court who forges, conceals, destroys evidence, or provides false certification materials and obstructs the trial of the case by the people's court may, according to the seriousness of the circumstances, give a reprimand, order a statement of repentance, or impose a penalty of less than 10,000 yuan. Fines, detention for less than 15 days; if a crime is constituted, criminal responsibility shall be investigated according to law."

## **2. The interests of the lawsuit**

If there is no interest, there is no right to appeal, which shows the importance of the theory of appeal. The academic circle generally defines the interests of litigation from two aspects: the necessity of rights protection and the effectiveness of rights protection. The necessity of rights protection means that damages to the interests of the parties must be remedied through judicial proceedings. The effectiveness of rights protection refers to the fact that judicial decisions can effectively resolve disputes. Only when the judge subjectively believes that the protection of rights is both necessary and effective can the interests of the lawsuit be established.

Two points need to be emphasized in particular: first, the interest of litigation refers to the subjective understanding and discretion of the judge on whether the protection of rights is necessary and effective, which is general and does not require detailed and strict elements, but only requires the objective existence. Second, as a constituent element of the right of action, the interest of the action has distinct procedural attributes, and generally has nothing to do with the interest of the entity in action, but in the action for payment, the plaintiff requires the defendant to act or not to act. Litigation interests have been incarnated into the integration of payment claims and litigation interests. At this time, the interests of the appeal have been put on the cloak of the substantive right of claim<sup>39</sup>; third, the interests of the substantive appeal are objective and do not depend on the subjective will of the person. Therefore, in judicial practice, it is inappropriate to regard the improper purpose of litigation as the basis for the lack of interests of a person's litigation, which is contrary to the objectivity of the interests of litigation. For example, in the "Xue Dianling case", the court of retrial held that Xue Dianling and the other three actually used government information to open the lawsuit to achieve the purpose of expanding influence and reflecting petition appeals, so they did not have the benefit of the court's relief.

As for the trial of the "Lu Hongxia case", this article disagrees with the Gangzha Court's denial of the interests of the plaintiff's abuse of the right to apply for government information disclosure.

First of all, whether the plaintiff established the abuse of the right to apply for government information disclosure is open to question, but this article will not expand here. But regardless of whether the right to apply for government information disclosure is abused or not, the author also believes that Lu Hongxia certainly has the benefit of suing. There are three reasons: First, the law stipulates that access to government information disclosure is a legitimate right. The legal basis for the interests of litigation in our country should be Article 2 of the new "Administrative Litigation Law"<sup>40</sup>. As long as the administrative counterpart believes that his legitimate interests have been infringed by the administrative agency, he can sue in the people's court for relief. The "Provisions of the Supreme People's Court Concerning Several Issues Concerning the Trial of Administrative Cases of Government Information Disclosure" further clarifies that any information provided by an administrative organ that does not meet the content and form required by the administrative counterpart in the application can be sued. Moreover, in modern society, the government has a lot of information. No matter from the perspective of facilitating the public's production, life, and scientific research, or for better supervision of administrative agencies, the right to obtain government information disclosure should be a legal right.

Secondly, the word "believe" in the law indicates that as long as the applicant for government information subjectively believes that his legal interests have been damaged, he can file a lawsuit. In the Lu Hongxia case, the plaintiff Lu Hongxia subjectively believed that the content of the defendant's reply document from the Development and Reform Commission of Nantong City was different from the document she had applied for disclosure, so she had the benefit of suing. As for whether the content of the application covered by the defendant's reply document is true, it should be determined in the substantive trial, and should not be part of the elements of the right to appeal.

Finally, the core of the claim for payment lies in the request for certain actions or omissions. The general form of administrative payment is that the administrative subject should provide special groups with material benefits or benefits related to material benefits in accordance with administrative laws and regulations. With the development of the times, the interests of information are becoming more and more prominent. The establishment of my country's government information disclosure system has further clarified that the public has the right to request the government to disclose the government information they apply for in accordance with the law. In essence, government information disclosure is administrative information payment. In the Lu case, the plaintiff Lu Hongxia requested the court to: 1. revoke the original reply of the defendant; 2. order the defendant Nantong Municipal Development and Reform Commission to make a new reply. The core of its petition lies in

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<sup>39</sup>[Japan] Yasuhiro Taniguchi : " Procedural Justice and Litigation " , translated by Wang Yaxin and Liu Rongjun , China University of Political Science and Law Press , 2002 edition, p. 189.

<sup>40</sup>Article 2 of the "Administrative Litigation Law": "Citizens, legal persons or other organizations have the right to bring a lawsuit to the people's court in accordance with this Law if they believe that the administrative acts of administrative organs and their staff have violated their legitimate rights and interests."

the latter, that is, to request the defendant Nantong Municipal Development and Reform Commission to act. At this time, Lu Hongxia's substantive right to request the defendant to make administrative information payments and the right to obtain information (the interests of the lawsuit) that must ask the court for relief are combined into one. Lu Hongxia believes that her application for government information disclosure has not received a targeted and clear reply, and she has obtained the entity right to request the defendant to make administrative information payments at that time, and the benefits of the lawsuit have also arisen.

To sum up, the author believes that the plaintiff Lu Hongxia is a qualified party and has the interest to sue, and the requirements for the right to sue are met.

In addition, it should be pointed out that in the judicial practice of government information disclosure administrative litigation, many courts regard the counterparty's inability to provide evidence to explain the needs of specific production, life, and scientific research as the standard that the administrative counterparty does not have the interests of litigation. For example, in the "Guo Xingmei v. Chongqing Shaping District People's Government Information Disclosure Case", the court held that Guo Kaimei's application for the disclosure of the aforementioned government information and the specific legal rights involved in filing the lawsuit failed to prove or reasonably explain. interests of the suit. However, the author believes that it is unreasonable to link the "three needs" with the interests of litigation in judicial practice. The reason is that, first of all, the core value of the government information disclosure system is to improve the transparency of government administrative activities, help citizens understand the work of the government, and supervise the administrative behavior of the government. If the three needs are equated with the interests of litigation, the threshold for litigation will inevitably be greatly increased, which is contrary to the value of the government information disclosure system; <sup>41</sup>"Need" is the content of substantive trial. The courts cannot say that it is inappropriate to use the "three needs" as the conditions for the establishment of the plaintiff's subject qualification. In other words, the Supreme People's Court has further clarified that the "three needs" should not be the prerequisites for the establishment of the right to appeal. Thirdly, in the author's opinion, obtaining government information according to the law is an important manifestation of citizens' right to know and an important means of supervising the work of administrative agencies. As a basic constitutional right, it should not be limited by the purpose. It should not matter whether citizens use government information after obtaining it, what field it is used for, and what purpose it achieves.

## **(2) Substantive Judgment - Constituent Requirements for Abuse of Administrative Litigation Right**

The right of action exists in various judicial litigation fields, and the abuse of right of action derived from the right of action is no exception. In view of the generality of the procedural law, at the substantive judgment level, the determination of the constituent elements of the abuse of administrative litigation rights can still try to learn from the relevant theories of the civil procedure law. There has always been a dispute between "four elements" and "two elements" in the study of the constitutive elements of abuse of right of action in civil procedure law.

The "Four Elements Theory" based on the experience of the Anglo-American legal system focuses on the damage caused by excessive litigation, that is, the damage to the rights of innocent parties and the waste of trial resources. "Misuse of process" (Misuse of process) should be regarded as an independent civil tort ". <sup>42</sup>Therefore, the criteria for determining the misuse of the right of action should refer to the constitutional requirements of the tort, including the subjective fault of the actor, the existence of the abuse of litigation, and the damage caused. The occurrence of the abuse of litigation and the existence of a causal relationship between the damage and the four elements. Correspondingly, the "four elements theory" advocates imposing tort liability on the party involved in the abuse of litigation, and the other party has the right to sue separately for compensation for infringement damages. According to the degree of damage Differently, while the prosecution is dismissed, the party involved in the abuse of litigation may also be sentenced to bear the case acceptance fee, the defendant's lawyer's fee, and an administrative fine, etc. If serious consequences are caused, the crime of "obstructing justice" may also be established in the criminal law.

The "two elements theory" based on the tradition of the civil law system focuses on punishing the destruction of public resources and trial efficiency by the abuse of litigation itself. As a principled norm, the principle of good faith in the Civil Procedure Law objectively requires the parties to exercise their litigation rights to be just, good-faith, and faithful. If the parties maliciously exercise the right to sue, it constitutes a

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<sup>41</sup>The Supreme People's Court's "Reply on Whether the Requester Qualifies as a Plaintiff to Request Disclosure of Government Information Irrelevant to My Production, Life, Scientific Research and Other Special Needs" (2010): It is related to the need and belongs to the content of the substantive trial, which should not be used as a condition for the qualification of the plaintiff. "

<sup>42</sup>Xu Aiguo: "The Tort Liability of "Abuse of Legal Proceedings" in Anglo-American Law", *Jurician*, No. 2, 2000, p. 117.

violation of the principle of good faith and should be regulated by law. Therefore, the constitutive elements for determining the abuse of the right of action only include the existence of subjective malice and abuse of the right of action. Different from the regulatory measures of the "Four Elements Theory", the "Two Elements Theory" focuses on the punishment and sanction of the parties involved in the abuse of litigation, rather than on making up for damages.

In the selection of the theory of the abuse of the administrative right of appeal, this paper finally advocates the introduction of the "principle of good faith" and adopts the "theory of two elements". This is based on the existing legal norms in our country. According to Article 101 of the new "Administrative Procedure Law"<sup>43</sup>, if there is no legislative gap in the administrative procedure law in terms of suspending litigation and terminating litigation, the "Civil Procedure Law of the People's Republic of China" can be applied. relevant regulations. Although the provision does not explicitly mention the dismissal of the lawsuit, we should regard the dismissal of the lawsuit as a parallel matter with the suspension and termination of the lawsuit. Regarding the abuse of administrative litigation rights that require a ruling to reject a lawsuit, there should be no legal obstacles to the application of the relevant provisions of the Civil Procedure Law of the People's Republic of China when there is no provision in the Administrative Procedure Law. As early as 2012, my country's "Civil Procedure Law" officially introduced the "principle of good faith". In order to maintain the coordination between laws and keep consistent with the Civil Procedure Law, this article finally chooses the "two elements theory".

### **1. Subjective malice**

Under the guidance of the principle of good faith, the administrative counterpart should maintain good faith and honesty in the process of exercising the right of appeal. If a party actively pursues a lawsuit knowing that it will disturb the order of the lawsuit, waste public resources, and affect the normal work of the judicial and administrative organs, it constitutes subjective malice to abuse the administrative right of litigation. In the process of judging the subjective state of administrative counterparts, it is necessary to limit the level of understanding of ordinary people and pay attention to distinguishing between intentional and negligent subjective intentions. Due to differences in educational background and knowledge levels, different social classes have different understandings of laws and facts. Therefore, it cannot be ruled out that the parties involved are at fault in their subjective mentality due to lack of legal knowledge. Negligence does not belong to the category of "subjective malice" here.

Subjective intentions are not undetectable and difficult to define. Judges can comprehensively assess whether the administrative counterpart has disrupted litigation procedures, wasted judicial resources, disrupted the normal work of administrative agencies, sought other illegitimate interests, The intention and purpose of venting personal emotions. For example, all the lawsuits brought by the administrative counterpart have gone through the first instance, second instance, and retrial procedures, whether to file the lawsuit again after obtaining relevant information, whether to directly declare the purpose of the city to obtain compensation for demolition, etc. In order to maximize the protection of the administrative counterpart's right to sue, the judge must exercise caution and restraint when detecting the administrative counterpart's subjective intention through objective behavior, and strictly interpret "subjective malice". In many judicial cases, the courts have determined that the plaintiff's intent in the lawsuit is to put pressure on the government and its relevant departments to solve their own problems of demolition, compensation and resettlement, but they have not provided corresponding factual evidence. Such as "Lu Hongxia case", "Xu Guoqing case" and so on. In my opinion, any administrative lawsuit will put pressure on the administrative agency being sued. This is a concrete manifestation of the administrative litigation supervision of the work of the administrative agency, and it is also a by-product of the administrative counterpart dragging the administrative agency into the trial procedure. If putting pressure on relevant departments constitutes improper purpose and subjective malice, then all administrative counterparts who expect judicial relief should establish subjective malice. What is important is that how to prove that the administrative counterpart is to solve his own compensation and resettlement problems, the court's unfounded speculations and conjectures are open to question.

### **2. Objective behavior**

In order to constitute the abuse of the administrative right of appeal, there must be the behavior of the administrative counterpart indiscriminately. At present, the understanding of abuse of litigation in the theoretical circles is mostly focused on generalized external manifestations. For example, the British "Abusive Litigation

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<sup>43</sup> Article 101 of the "Administrative Litigation Law" stipulates: "When the people's court hears an administrative case, if there is no provision in this law regarding the suspension of litigation, termination of litigation, summary procedure, execution, etc., the "Civil Procedure Law of the People's Republic of China" shall apply. Relevant regulations. "

Act" believes that habitual or persistent filing of entangled and unreasonable lawsuits constitutes abuse of litigation; the new French "Civil Procedure Code" <sup>44</sup> Delay in litigation is the main form of abuse of litigation <sup>45</sup>. In order to be more operable and practical, the author proposes to comprehensively determine whether the administrative counterpart has abused the right of action from four levels: the subject of the action, the number of actions, the content of the action, and the impact of the action.

(1) Behavior implementing subject

The subject of the behavior is different from the above-mentioned qualified parties. The subject of behavior implementation is the cognition of the scope of the subject of abuse of litigation. Here, the subject of the abuse of litigation mainly affects the judgment of the number of lawsuits. In other words, when judging the number of abuse of litigation, can we delineate the scope of the subject by considering all administrative counterparts who are kinship or related to the case as a whole? Calculate the number of prosecutions. In the "Lu Hongxia case", the plaintiff in the lawsuit and the object of the referee's regulation were Lu Hongxia alone from the beginning to the end. When the trial court judged the subject of the act, because Lu Hongxia, Lu Fuguo, and Zhang Lan were members of the same family, they evaluated the three as a whole. The author believes that, in the absence of corresponding legal norms and theoretical basis, arbitrarily expanding or shrinking the scope of the subject of abuse of litigation is suspected of abusing judicial power. Every single individual belonging to the same family shall enjoy an independent right of administrative appeal, unless there is sufficient evidence of malicious collusion among several independent individuals. In judicial practice, the scope of the subject of abuse of litigation has become more and more generalized, and the scope of subject of abuse of litigation has even been extended from family members to the same village and the same collective economic organization. For example, in the "Xu Yongqing case", Tianjin No. 2 Intermediate People's Court, which was in charge of the second instance, regarded 22 members of the Lvjuhe Collective Organization in Binhai New Area, Tianjin as the same subject of abusive litigation.

(2) Number of lawsuits

The number of prosecutions should not be a separate constituent element. It can only be considered as part of the objective conduct requirement. First of all, everything obeys the law of development from quantitative change to qualitative change. Just like the famous grain pile argument and bald head argument, we cannot determine the critical point of litigation numbers that lead to excessive litigation. For example, in the "Lu Hongxia case", 36 cases were identified as abusive litigation; in the Guo Kaimei case, 11 cases were identified as abusive litigation; and in the "Xu Yongqing case", Tianjin No. 2 Intermediate People's Court in charge of the second instance only stated that Multiple times for multiple people. If the standard for the quantity of abuse of litigation is determined mechanically and rigidly, how should we judge the prosecution before and after the critical point. Secondly, our judgment on the number of lawsuits must be based on the grasp of the time period. The common referee expression is that the litigation is continuous and uninterrupted, but there are differences in the time period of the determination. For example, the time period in the "Lu Hongxia case" is 2 years; the time period in the "Guo Xingmei v. Chongqing Municipal People's Government Administrative Reconsideration Case" is only 6 months. To sum up, the number of lawsuits should be considered more as a factor for the establishment of the abuse of the right to litigate.

(3) Litigation content

We need to compare whether the content of related lawsuits is repetitive, similar, and trivial. Generally speaking, since only two cases are involved, it is relatively easy to judge the repeated prosecution against the same subject matter. However, in the face of a huge number of abuse cases, it becomes more and more difficult to compare the content of litigation. In the "Lu Hongxia case", the court explained in detail in the judgment documents that Lu Hongxia, Lu Fuguo, and Zhang Lan applied for government information disclosure in separate combinations and repeated applications, but did not compare the contents of the 36 lawsuits. Pen and ink, directly giving the conclusion of repeatedly and frivolously filing trivial, identical or similar lawsuits. The author believes that the abuse of the right to apply for government information disclosure and the abuse of the right to appeal are two independent concepts. The abuse of the right of information disclosure does not absolutely lead to the abuse of the administrative right of appeal. Therefore, in terms of content, the content comparison results of the 96 government information disclosure cases filed by the Gangzha Court against Lu Hongxia, Lu Fuguo, and Zhang Lan cannot represent the content comparison results of the 36 administrative

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<sup>44</sup>Geng Baojian , Zhou Mi : " The Abuse and Restriction of the Right to Prosecute in the Field of Government Information Disclosure—Also on the Value of Lu Hongxia v. Nantong Development and Reform Commission's Government Information Disclosure Case", *Administrative Law Research* , Issue 3, 2016 , p.35

<sup>45</sup>"New French Code of Civil Procedure", translated by Luo Jiezheng, Law Press, 2008 edition, p. 71.

lawsuits filed by the three persons. Determining abuse of litigation should be serious and cautious, and the court needs to work hard on the factual demonstration of the content of the lawsuit, otherwise it will be difficult to convince the public. Not only that, before comparing the content of the lawsuit, the court should exclude the administrative lawsuit against the government that should have taken the initiative to disclose but failed to do so. This is because the non-voluntary disclosure of this part of information is due to the negligence or negligence of the administrative agency, and the corresponding administrative lawsuit should not be attributed to the administrative counterpart for any reason. If the content of the government's undisclosed litigation should be generally included in the scope of legal evaluation, it will undoubtedly cause a huge damage to the rights of the administrative counterpart.

In addition, this paper believes that the court should always keep in mind and maintain its neutral role in the collection of evidence for the abuse of the right of action by the administrative counterpart. According to Article 29 of China's "Interpretation of the Supreme People's Court Concerning Several Issues Concerning the Implementation of the Administrative Procedure Law of the People's Republic of China" (hereinafter referred to as the "Interpretation"), the people's court can only provide evidence clues but cannot collect them by itself.<sup>46</sup> It also has the right to obtain evidence ex officio under the circumstances of applying to the court for retrieval and the parties should provide but cannot provide the original or the original. According to the general principle of administrative litigation, the defendant bears the burden of proof. In the "Lu Hongxia case", the trial court voluntarily obtained evidence from Nantong Municipal People's Government, Nantong Intermediate People's Court and other agencies in accordance with its authority, just because the defendant argued that the plaintiff and his family had obviously abused the right to apply for government information disclosure. It seems to be suspected of helping the defendant to bear the burden of evidence collection, which undermines the authority of the court as a neutral judge.

#### **4. Regulatory measures against the abuse of administrative litigation rights**

##### **(1) Judgment results and review of the Lu Hongxia case**

On the premise that the plaintiff Lu Hongxia had abused her right to sue, the court not only dismissed the lawsuit, but also decided that the plaintiff would file a similar administrative lawsuit with the People's Court in the future, which would be subject to strict review. The plaintiff must provide evidence to explain that its application and litigation are to satisfy its own "three needs", otherwise it will bear adverse consequences.

Other courts have also imitated the regulatory measures of the Lu Hongxia case to limit the plaintiff's subject qualifications. Similar administrative lawsuits should be strictly scrutinized, and they must prove that they have special needs for production, life, and scientific research. Many scholars have questioned whether specific measures to regulate abuse of litigation in judicial practice are appropriate:

Firstly, the outcome of the adjudication surrounding the dismissal of the prosecution. Some people think that Article 44 of the<sup>47</sup> "Interpretation" clearly stipulates that the ruling to dismiss the prosecution must meet the statutory requirements. On the premise that there are no laws and regulations in our country that regard the abuse of the right of action as a negative requirement for the administrative counterpart to sue, the judicial organ simply rejects the prosecution, does not conduct a substantive trial, and does not judge the legitimacy of the defendant's government information disclosure behavior, which will damage the plaintiff's rights<sup>48</sup>.

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<sup>46</sup>Article 29 of the Interpretation of the Supreme People's Court on Several Issues Concerning Enforcement (Administrative Litigation Law of the People's Republic of China) (2000): "In any of the following circumstances, the people's court has the right to obtain evidence: (1) the plaintiff or the The three persons and their litigation representatives provided evidence clues, but they were unable to collect them themselves and applied to the people's court for collection;

<sup>47</sup>Interpretation of the Supreme People's Court on Several Issues Concerning Enforcement (Administrative Litigation Law of the People's Republic of China) (2000)Article 44 : "In any of the following circumstances, it shall be ruled not to accept the case; if it has been accepted, it shall be ruled to dismiss the prosecution: (1) The requested matter does not fall within the scope of the administrative trial jurisdiction ... ( 11) The prosecution does not meet other statutory requirements .

<sup>48</sup>Shen Tu Liangyu: "Legal Regulation of Abuse of Litigation Rights in Government Information Disclosure Cases under the Background of Separation of Traditional and Simplified Cases ", Graduate Students of Law University, Issue 1, 2017, p. 82.

Secondly, judgmental outcomes surrounding limitations on standing of plaintiffs. Regarding the requirement of the court that the plaintiff must produce evidence to explain that the application and litigation are to meet the special needs of production, life, scientific research, etc. when the plaintiff files a similar administrative lawsuit with the administrative agency in the future, some scholars believe that this constitutes an improper restriction of the plaintiff's qualifications, which exceeds the due jurisdiction of the judiciary<sup>49</sup>.

Regarding the first question, this paper takes a negative attitude. The contradiction between the number of cases and the small number of cases in our country is very prominent. Under the premise that the abuse of litigation rights is established, further substantive trials will be a waste of trial resources and interfere with government work. Rejecting the lawsuit is an important means for the court to stop losses in a timely manner. And looking at the legislative cases of various countries on the regulation of the abuse of the right of action, the United Kingdom, France, and Germany all advocate dismissing the lawsuit in a timely manner after the abuse of the right of action is identified, and there is no major disqualification in the protection of the rights of the plaintiff.

Regarding the second question, this paper takes a positive attitude. The core value of the government information disclosure system should be to protect citizens' right to know, improve the transparency of government administrative activities, and supervise government administrative behavior. As a basic human right recognized by the Constitution, the establishment of the right to know does not require any purpose requirements. If the "three needs" of the purpose of applying for government information are linked with the plaintiff's qualifications, the threshold for litigation will inevitably be greatly increased, which is contrary to the value of the government information disclosure system and will not help protect the right to know of the counterparty. Moreover, the judicial interpretation of China's Supreme People's Court further clarifies that the "three needs" should be carried out in substantive trials, and the examination and approval agencies cannot judge that the plaintiff is not qualified for administrative litigation based on the lack of "three needs". The court's decision to strictly review the "three needs" of the plaintiff's similar administrative litigation in the future means that substantive trials are still required, and the purpose of controlling public resources cannot be achieved.

Also according to the Supreme People's Court's "Opinions on Legally Protecting the Litigation Rights of the Parties to Administrative Litigation"<sup>50</sup>, the conditions for prosecution must be strictly in accordance with the provisions of the law, and the judicial organs cannot deviate from the law to add conditions for other parties to sue. In judicial practice, the court requires the plaintiff to produce evidence to explain that his application and litigation are to meet his own special needs in production, life, scientific research, etc., when he files a similar administrative lawsuit with the administrative agency or the people's court in the future, which obviously improperly limits the plaintiff's subject qualification, increasing the burden on plaintiffs to sue. Regardless of the fact that Lu Hongxia's abuse of litigation rights in the Gangzha Court's judgment is subject to discussion, the Lu Hongxia case should not be promoted as far as it requires Lu Hongxia to provide evidence to explain the "three needs" when she files similar administrative lawsuits in the future. Regrettably, when the "Supreme People's Court Gazette" published Lu Hongxia's case, it failed to detect the "suspicion of abuse" of the Hong Kong Gate Court's judicial power in Lu Hongxia's case.

## **(2) Basic principles to be observed in regulating the abuse of administrative litigation rights**

### **1. Principle of prudence**

The principle of good faith not only requires the parties to exercise their rights to be kind and honest, but also requires the judge to always maintain the role of a neutral judge and conduct a fair trial. The law is lagging and inextensible. Therefore, the people authorize judges to exercise discretion in adjudication to adjust the proper state of social relations and pursue fairness and justice. Facing the lack and blankness of statutes, judges should use appropriate legal interpretation methods to give full play to judicial initiative and fill in legal loopholes. At the same time, it is necessary to dig out the basis or origin of legal rules, explore those principled norms that contain human moral intuition, use rich theoretical knowledge of law, and use personal reason to make a fair judgment on the case.

At present, China does not have any specific laws and regulations on the identification and regulation of the abuse of administrative litigation rights. The identification and regulation of the abuse of administrative

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<sup>49</sup>See supra note 8, page78.

<sup>50</sup>The Supreme People's Court's "Opinions on Protecting the Litigation Rights of the Parties to Administrative Litigation According to the Law" (2009): "It is necessary to accurately understand and strictly implement the provisions of the Administrative Litigation Law and relevant judicial interpretations on the conditions for filing a lawsuit, the qualifications of the subject of litigation, and the time limit for filing a lawsuit. In addition, other conditions that restrict the parties to sue shall be stipulated separately."



litigation rights are within the scope of judges' discretion<sup>51</sup>.

Modern theories of the right to appeal generally recognize that the right to appeal is a basic human right determined by the Constitution. The degree of protection of the administrative right of action not only determines whether the administrative counterpart can conduct judicial proceedings, but also relates to the degree of supervision of the administrative counterpart to the work of the administrative agency. The principle of prudence requires judges to maintain a cautious and restrained attitude towards the identification and regulation of the abuse of administrative litigation power. With the goal of maximally protecting the administrative counterpart's right of action, the judicial power cannot be abused, and the administrative counterpart's right of action cannot be damaged under the banner of regulating the abuse of the administrative right of action.

When determining the subjective malice of the abuse of administrative litigation rights, we must pay attention to the difference between the negligent mentality caused by insufficient litigation ability and the subjective intention of indiscriminate litigation. After accurately identifying and confirming that the abuse of the administrative right of appeal is established, appropriate regulatory measures should be selected as the result of the judgment. In particular, it is necessary to avoid improperly restricting the plaintiff Lu Hongxia's subsequent litigation qualifications. When regulating the phenomenon of excessive administrative litigation, remember not to overcorrect and damage the legal right of litigation of the administrative counterpart. In terms of specific operations, since it is very difficult to identify and regulate the abuse of administrative litigation rights, the court should select judges with rich trial experience and excellent comprehensive quality to hear cases suspected of administrative abuse of litigation. Alternatively, a collective decision by the adjudication committee may be considered.

## **2. Reasoning principles**

An important manifestation of the judge's prudence in the identification and regulation of administrative litigation rights abuse cases lies in the rigorous argumentation and detailed reasoning of the case trials. In France, the Supreme Court requires that "the fact-trial judge should fully reason when identifying the party's abuse of litigation, and demonstrate the party's fault liability requirements that have constituted a quasi-tort"<sup>52</sup>. In order to ensure the authority and credibility of judicial trials, judges should clarify the boundaries between the abuse of administrative litigation rights and the proper exercise of administrative litigation rights. In the judgment document, for the determination of each element of the establishment of the right of action and the establishment of the abuse of the right of action, the details of the facts supporting the determination should be listed in the follow-up, instead of directly giving a conclusion. For example, "dozens of lawsuits with similar content", it should be pointed out which lawsuits and the details of the content of the lawsuit are similar; another example is "multiple people have repeatedly disclosed", it should be specified who and how to combine them, and what content is required to be repeatedly disclosed wait. The identification of each relevant detail does not need to draw conclusions in the same direction<sup>53</sup>, and factual identification is full of contradictions and conflicts, which are more credible.

### **(3) Specific ways to regulate the abuse of administrative litigation rights**

#### **1. Ruling to dismiss the prosecution**

Under the case-filing registration system, the court no longer conducts substantive review of the administrative counterpart's prosecution conditions during the case-filing stage. On the one hand, the case-filing registration system effectively solves the problem of "difficulty in filing a case" in administrative litigation; on the other hand, the case-filing registration system allows many cases that should not enter the litigation process to enter the gate of the court. The limited judicial resources are becoming increasingly tight, and the contradiction of "many cases are few" has become increasingly prominent. If the court is still required to conduct substantive trials under the premise that the abuse of litigation rights is established, it will further increase the workload of judges, waste trial resources, disrupt the normal work of administrative agencies, and cause unnecessary litigation burdens on administrative agencies. Ruling to dismiss the lawsuit is the best option for the court to stop losses in a timely manner. In view of the fact that China's "Administrative Procedure Law" has no legal provisions on the rejection of abuse of litigation rights, this article advocates temporarily citing the

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<sup>51</sup>Wang Meng: "Judicial Thoughts on the Governance of Indiscriminate Litigation in Civil Litigation", *Politics and Law*, No. 5, 2016, p. 135.

<sup>52</sup>L. Favoreu, L. Phillip, "Les grandes décisions du Conseil constitutionnel, Dalloz2005, p 56

<sup>53</sup>Shen Kui: "Judicial Response to Information Disclosure Application and Litigation Abuse—Comment on the Case of Lu Hongxia v. Nantong Development and Reform Commission", *Legal System and Social Development*, No. 22, 2016, p. 31.

"principle of good faith" in China's "Civil Procedure Law" as the legal norm for rejecting abuse of litigation rights . It needs to be specifically pointed out that the dismissal of the prosecution is after the case has been accepted for filing, so the court cannot accept the abuse of the right of appeal as a condition for filing the case at the level of judicial practice, and refuse to accept it. Dismissal of lawsuits is a common measure used by Western countries to regulate the abuse of litigation rights at the procedural level. For example, the British "Civil Procedure Rules" clearly stipulates that the plaintiff's lawsuit will be dismissed by the court without reasonable grounds or only for the purpose of delaying the lawsuit<sup>54</sup>; Dismiss frivolous and repeated actions by the parties<sup>55</sup>, etc.

In addition, due to the confusion of litigation requirements and prosecution requirements, the prosecution conditions in our country show the characteristics of "advanced". The administrative counterpart who does not meet the requirements of the "Administrative Litigation Law" must not meet the constituent elements of the right to sue. Therefore, the court should accurately grasp the provisions of Article 44 of the " Interpretation " , and rule to reject the case at the time of filing and registration for those who do not meet the conditions for filing a lawsuit , and rule to dismiss the lawsuit after acceptance . Sufficiently filter cases that do not meet the constituent elements of the right to appeal. Without the right to sue, there is no need to consider the abuse of the right to sue. At the substantive level, the number of cases that need to be identified as abusing the right of action has been reduced, and judicial efficiency has been improved.

## **2. Pass on litigation costs**

Under the hypothesis of economic man, the parties concerned will pay as little as possible in exchange for as much return as possible according to the cost-benefit analysis. Therefore, shifting litigation costs and increasing litigation costs can prompt administrative counterparts to exercise their administrative litigation rights prudently, effectively alleviating the current situation of anomie in administrative litigation rights. At present, according to Article 102 of China's "Administrative Litigation Law"<sup>56</sup>, litigation costs are generally borne by the losing party . And according to Article 6 of the "Measures for the Payment of Litigation Expenses" (hereinafter referred to as the "Measures") promulgated by the State Council in 2006 , litigation expenses include case acceptance fees, application fees, transportation expenses<sup>57</sup>for witnesses to appear in court on time , accommodation expenses, living expenses and lost work Subsidy ; specifically for government information disclosure lawsuits, the case acceptance fee is only 50 yuan ; it can be halved if the summary procedure is adopted ; no need to pay if the ruling rejects the lawsuit. According to the author's analysis of a large number of administrative litigation cases of abuse of government information disclosure, the court's judgment on litigation costs can be divided into "the case acceptance fee is 50 yuan, which will be refunded", "the case acceptance fee is not charged in this case", and "the case acceptance fee is 50 yuan. Yuan" in three situations. Low litigation costs are undoubtedly a disguised form of encouragement and connivance to abuse of litigation, and it is difficult to form substantial economic pressure to curb abuse of litigation.

In 2016, the Supreme Law's "Several Opinions on Further Promoting the Separation of Complicated and Simple Cases and Optimizing the Allocation of Judicial Resources"<sup>58</sup>clearly stated that if a party abuses the

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<sup>54</sup> Robert L. Tucker , "Vexatious Litigation An Unfair Competition, and the Applicability of the Noerr-pennington Doctrine," Ohio Northern University Law Review , Vol. 2 2 ( , 1995 ) , pp109 .

<sup>55</sup>Geoffrey C. Hazard, "Abuse of Procedural Rights: Comparative Standard of Procedural Fairness", Kluwer Law International, 1998, pp49.

<sup>56</sup> Article 102 of the "Administrative Litigation Law" : "The people's court shall charge litigation fees when trying administrative cases. The litigation fees shall be borne by the losing party, and shared by both parties if both parties are responsible. The specific methods for collecting litigation fees shall be stipulated separately."

<sup>57</sup>Article 6 of the State Council Order No. 481 "Measures for the Payment of Litigation Fees"(2006) : " The litigation fees that parties should pay to the people's court include: (1) case acceptance fees; (2) application fees; (3) witnesses, appraisers, Transportation expenses, accommodation expenses, living expenses, and work-delay subsidies for translators and adjusters who appear in court on the date specified by the people's court." Article 13: "(5) Administrative cases shall be paid according to the following standards: 1. Trademark, patent, and maritime administrative cases 100 yuan per case; 2. 50 yuan per case for other administrative cases."

<sup>58</sup> Article 22 of the Supreme People's Court's " Several Opinions on Further Promoting the Separation of Complicated and Simple Cases and Optimizing the Allocation of Judicial Resources" (2016): "The parties have committed obvious misconducts such as abusing their litigation rights and delaying their litigation obligations, causing direct losses to the other party or a third party. The people's court may, according to the specific

right to litigate and delays the lawsuit, causing direct losses to the other party or a third party, the people's court may consider adjudicating the abusive party bear the attorney's fees of the innocent party. The author believes that, in addition to the legal fees of the party without fault, the litigation costs should also include the party's transportation expenses, lost wages, board and lodging expenses and other reasonable expenses. There have long been precedents in foreign countries for curbing the abuse of administrative litigation rights by passing on litigation costs and increasing litigation costs. Such as the United States, Australia, France have similar regulations<sup>59</sup>.

### **3. Build a penalty system**

According to the degree of viciousness of the administrative counterpart who abused the administrative right of action in a specific case of administrative abuse of the right of action, the judge may consider imposing a fine on the administrative counterpart who abused the administrative right of action as a punishment. The focus of fines is on the sanction and punishment of abusers, not on filling the interests of innocent parties. As an important measure to regulate the abuse of litigation rights at the substantive level, fines are reflected in the legislation of many countries. For example, the "Civil Procedure Law of Japan" stipulates that when a party files a lawsuit for the purpose of delaying the lawsuit, the court may require him to pay cash less than 10 times<sup>60</sup> the case acceptance fee. The "French Code of Civil Procedure" even stipulates that a fine of up to three thousand euros can be imposed on those who delay litigation or file a lawsuit in an indiscriminate manner<sup>61</sup>.

### **4. It is not appropriate to introduce infringement damages**

Some scholars believe that the abuse of legal proceedings should be regarded as an independent civil tort. The opposite party who has been harmed has the right to file a separate lawsuit against the tortious behavior of the abusive litigation party and demand compensation for tort damages. However, this article believes that although administrative litigation and civil litigation have many similarities, administrative litigation needs to perform additional functions of supervising administrative agencies, restricting administrative rights, and improving the level of administrative governance in addition to realizing rights relief and resolving disputes. In administrative litigation, the administrative organ in a dominant position should bear a higher duty of patience for abuse of litigation. Moreover, the filing of a tort damages lawsuit is only applicable to the injured party who can prove that the losses he suffered were directly caused by the abuse of the right of action by the other party, and the losses can be compensated with a certain amount of money<sup>62</sup>. Although the abuse of administrative litigation rights wastes judicial resources and improperly increases the litigation burden of administrative agencies, this negative effect is difficult to measure in terms of money and does not involve specific persons and properties. Losses cannot be quantified, and compensation for infringement damages is naturally out of the question.

## **V. Summary**

my country has a vast territory, and the level of social and economic development varies greatly between regions. The promulgation and revision of statutory laws need a long period of deliberation and research before they can be realized. Therefore, it is not uncommon in our country that judicial practice in various places goes ahead of the law. At the level of statutory law, my country has no legal provisions on the identification and regulation of the abuse of administrative litigation rights. As the first domestic case to regulate the abuse of administrative litigation right, the Lu Hongxia case is extremely representative and controversial. It fully demonstrates the attempt and exploration of the current judicial practice on the identification and regulation of the abuse of administrative litigation right, and has aroused theoretical circles on the issue of the abuse of administrative litigation right. heated discussion. Although the author believes that there are many things that can be discussed in Lu Hongxia's case, it does not affect the value of Lu Hongxia's case. In my opinion, where there is power, there is abuse of power. The implementation of the case registration system and the implementation of the new "Administrative Procedure Law" are more like a double-edged sword. While reducing the threshold of litigation to the greatest extent, expanding the scope of accepting cases, and protecting

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circumstances, support legitimate claims such as compensation for reasonable attorney fees raised by the party without fault in accordance with the law."

<sup>59</sup>Wang Xiao: "Research on the Protection and Abuse Regulation of Civil Litigation", China University of Political Science and Law Press, 2015 edition, pp. 112-125.

<sup>60</sup> See Note 33, page85.

<sup>61</sup> Wang Yan: "Regulation of Civil Abuse in France —— Taking French Judicial Precedents as the Research Object", *Applicable Law*, No. 12, 2014, p. 122.

<sup>62</sup>See note 1, page 77.

the parties' right to appeal, it also leads to the anomie of the administrative right of appeal. The abuse of the administrative right of action not only aggravates the tension of judicial resources and disrupts the normal working order of administrative agencies, but also affects the acceptance of judicial relief by other administrative counterparts whose legal interests have been damaged to a certain extent . We should give enough attention and attention to the abuse of administrative litigation right, accurately identify and regulate it. However, it needs to be specifically pointed out that regulating the abuse of administrative litigation rights does not mean restricting or even depriving administrative counterparts of their litigation rights. In the face of legislative gaps, when identifying and regulating the abuse of administrative litigation rights, judges should strictly abide by the principles of prudence and reasoning, adhere to the logical line from the establishment of administrative litigation rights to the abuse of administrative litigation rights, and judge administrative relative rights from the two aspects of the eligibility of the parties and the interests of litigation. Whether the person has the right to sue, judge whether the administrative counterpart has abused the right to sue from two aspects of subjective malice and objective abuse of litigation. When taking regulatory measures, we should also exercise restraint to avoid restricting the subsequent litigation qualifications of the counterparty who abused the lawsuit. Depending on the circumstances of the specific case, it can be regulated by dismissing the prosecution, passing on litigation costs, and fines. The author holds an optimistic and positive attitude towards the current anomie of administrative litigation rights. We should have the courage to allow trial and error during the period and the temporary "failure" of the mechanism.

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