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Resumen

Este artículo presenta algunos ejemplos de demandas de Litigación del Interés Público (LIP) que han tenido lugar en China en los últimos años. También analiza el impacto de dichas demandas sobre la sociedad y las estrategias adoptadas por parte de las personas que más activamente han interpuesto demandas de LIP. Finalmente, el artículo reflexiona sobre el vínculo entre LIP y el activismo político y sobre el futuro de estas demandas en China.

Palabras clave

Litigación del Interés Público (LIP), activismo político, China

Abstract

This paper will first present some examples of Public Interest Litigation (PIL) lawsuits in China in recent years. This is followed by an assessment of the impact of such lawsuits. It then describes the people who have been active in filing PIL lawsuits and their strategies. Finally, it discusses the link between PIL and political activism and the future prospect of PIL in China.

Keywords

Public Interest Litigation (PIL), political activism, China

PUBLIC INTEREST LITIGATION IN CHINA¹

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What is Public Interest Litigation?

Public interest litigation (PIL) involves the use of a country's legal system to instigate change that affects the public. Internationally, PIL has been described as “seeking to precipitate social change through court-ordered decrees”, “litigation designed to reach beyond the individual case and the immediate client”, “court-driven approaches in producing significant social reform”, “espousing causes through litigation”, “to help produce systemic policy change in society on behalf of individuals who are members of groups that are underrepresented or disadvantaged”, and so forth (Goldston, 2006). Chinese legal scholars have also advanced various definitions of PIL. So far no consensus has been reached, but it is generally agreed that PIL stands in contrast to private interest litigation. A PIL lawsuit must have wider implications beyond the individual case and affects more than the immediate litigant.

Chinese legal scholars have also talked about two other forms of legal action which are related to PIL, “public interest petitioning” (PIP) and “public interest lobbying”. PIP involves

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sending formal requests to the National People's Congress, the highest legislative body of the country, to review the constitutionality or legality of existing laws and government regulations, to investigate the implementation of certain laws/regulations, or to revise existing laws/make new laws (Huang, 2006). Public interest lobbying includes PIP but may also take other forms than direct petitions (Zhu, 2006). The relationship between PIL, PIP and public interest lobbying will be discussed later on.

This paper will first present some examples of PIL lawsuits in China. This is followed by an assessment of the impact of such lawsuits. It then describes the people who have been active in filing PIL lawsuits and their strategies. Finally, it discusses the link between PIL and political activism and the future prospect of PIL in China.

PIL Lawsuits

Well-known PIL lawsuits in recent years fall into the following categories:

1) Defending constitutional rights and principles, including equality, anti-discrimination, and the right to education

Example 1: In 2003, Zhang Xianzhu sued the Wuhu Bureau of Personnel in Anhui province for discrimination against carriers of hepatitis B virus. Zhang received the highest score in the civil service exam administered by the bureau but was denied employment after he tested hepatitis B positive in the physical examination. The lawsuit attracted wide public attention because China had a large number of hepatitis B virus carriers who had had similar experience. Media hailed the lawsuit as "China's first hepatitis B discrimination case".

Example 2: In 2005, two lawyers in Henan province sued the Longgang police station in Shenzhen for defamation. Pandering to popular prejudice against people of Henan origin, the police station put out a banner which read “Resolutely crack down on Henan racketeer gangs”, even though they had not caught any gang member from Henan, therefore had no evidence to suggest that racketeers operating in their area were Henan people. This act of the police station was considered discrimination based on people’s birthplace.

2) *Environmental protection*

Example 1: In 2001, two law professors sued the Nanjing Municipal Planning Bureau for erecting an elaborate viewing tower at a mountain resort. They charged that the platform “spoiled our spiritual gratification derived from enjoying the natural scenery”, and asked that the permission for the tower be rescinded.

Example 2: In 2002, a peasant in Zhejiang province sued the local environmental bureau for failing to take actions against local mines which polluted the environment. In 2003, he sued the provincial government and the provincial environmental bureau for failing to protect an important source of drinking water from pollution.

3) *Defending consumer rights*

Example 1: In 2004, a graduate law student sued the Henan Expressway Development Company for failing to ensure high-speed traffic flow on one of its expressways. The student paid the expressway toll but found that on a 62 kilometre stretch of road six repair and maintenance operations were taking place, which seriously hampered traffic. Since the expressway company did not provide the expected service, the student demanded the refund of his toll.

Example 2: In 2005, a legal scholar, Li Gang, learned that the National Dental Disease Prevention and Treatment Guidance Group, an informal outfit under the Ministry of Health, had endorsed many oral hygiene products such as toothpastes and chewing gums, even though the group was never authorized to endorse products. Li Gang accused the group of misleading consumers and initiated three lawsuits.

4) *Protecting public assets*

Example 1: In 2006, a Hunan peasant learned that the local finance bureau had purchased two new cars in 2005. Since the local government's budget for 2005 did not include this expenditure, the peasant considered the finance bureau's purchase illegal and a misuse of taxpayers' money, and took the bureau to court.

Example 2: In 2006, a Hunan lawyer found that a real estate company was guilty of appropriating state-owned properties. He reported the company to the local State Asset Management Commission and asked the Commission to launch an investigation. When the Commission refused to take action, he sued the Commission.

5) *Challenging administrative inaction which harms public interest*

Example 1: In 2000, a painter in Zhejiang province asked the local Cultural Bureau to remove a karaoke joint near a primary school which staged pornographic shows. After his appeals were repeatedly ignored, the painter sued the Cultural Bureau for administrative inaction.

Example 2: In 2001, a Zhejiang peasant sued the local Industry and Commerce Bureau for ignoring the illegal activities of a company which sold fake products.

6) *Defending the right to information*

Example 1: In 2003, a Shanghai consumer sued Nestle, charging that the company did not inform consumers that its products contained genetically modified ingredients.

Example 2: In 2002, over 3.000 parking meters were installed all over the city of Zhengzhou, many of which encroached on bicycle lanes and pedestrian sidewalks. In 2006, a Zhengzhou resident asked the Municipal Planning Bureau to show him the official documents concerning the planning and approval of the parking meters. After his request was refused, he sued the Bureau for violating citizens' right to information.

7) *Defending the rights of vulnerable or marginalized groups, such as rural women and migrant workers*

Example 1: In 2005, after working for the Beijing Kentucky Fried Chicken (KFC) Corporation for 11 years, Xu Yange was fired. KFC had not paid the employer's portion of Xu's social insurance contribution and refused to give Xu financial compensation for terminating his employment. The reason was that KFC had made its employees sign labor contracts with an employee leasing company. On paper, Xu had never been a KFC employee. He was employed by the other company which leased him to KFC. This method of hiring workers through labor leasing companies has been used by many employers to avoid providing social insurance contribution and other benefits for their employees and has infringed on the rights and interests of many migrant workers. In 2006, with the help of the Beijing Legal Aid Office for Migrant Workers, Xu took KFC to court (Tong, 2006).

Example 2: The infringement of rural women's land rights is a widespread problem in China. Many women are never allocated any land, others are likely to lose their land once they marry

and leave their native villages. In 2005, five “married-out” women in Anhui province took their native village to court, demanding to be paid a share of the land acquisition compensation which the village had received for its land (Women’s Watch-China, 2006).

The Impact of PIL Lawsuits

Some PIL lawsuits have ended in victories for the plaintiffs. For example, in the hepatitis B discrimination case mentioned above, the court ruled that the Wuhu Personnel Bureau’s decision not to hire Zhang Xianzhu was invalid. However, so far the majority of PIL lawsuits did not result in court rulings in favor of the plaintiffs. In fact, many lawsuits were rejected by the courts straightaway. For example, in the case of the painter suing the cultural bureau for administrative inaction, the court dismissed the case on the ground that the plaintiff did not have the standing to bring the lawsuit, since his interest was not directly affected by the nonfeasance of the cultural bureau. As the legal scholar Huang Jinrong calculated, of the 42 PIL lawsuits mentioned in his paper, only seven had resulted in full or partial success for the plaintiffs.

However, losing a case does not mean losing the cause. In many PIL lawsuits, although the plaintiffs did not gain legal victories, they nevertheless achieved their objectives. In the aforementioned case concerning the viewing tower at a mountain resort, the court did not accept the suit, but because of the publicity it generated and the strong public opinion against the 30 million yuan project, Nanjing Municipal Government stopped the construction of the tower and demolished the half-completed structure. In the case involving discrimination against Henan people, after the lawsuit was filed, the police station organized a press conference to offer its apologies. Subsequently, the plaintiffs agreed on a settlement with the

police station, accepted the latter's apologies and withdrew their case.

These victories outside the courtroom indicate that the legal impact of PIL lawsuits is separate from their social, political, or economic impact. In fact, many plaintiffs knew from the start that they had little chance of winning their cases, but they felt the lawsuits could serve a number of purposes from effecting change in government policy to encouraging more people to use the legal system to defend their rights. For this reason, most PIL lawsuits can be said to have had a positive impact, regardless of the outcome of the legal proceedings.

The positive impacts of PIL lawsuits include:

1) *Effect change in government policy and practice*

For example, hepatitis B cases have contributed to the promulgation of a new government regulation ending discrimination against carriers of hepatitis B virus in the recruitment of civil servants.

2) *Make the government more accountable*

Some lawsuits exposed illegal actions by government agencies or officials; others, such as cases challenging administrative inaction, created pressure on government agencies to carry out their responsibilities more conscientiously.

3) *Alert the public to unfair practices, especially those associated with unfair charges for goods and services provided by state monopolies, and open public debate on such practices*

In a typical case, legal scholar Huang Jinrong sued the Beijing Railway Bureau for including an insurance premium in the price of train tickets without informing passengers. Before this

lawsuit, most people were unaware that they had bought a compulsory insurance every time they made a train journey. The suit opened the debate whether this compulsory insurance based on a 1951 government regulation should now be abolished.

4) Raise the public's rights awareness

PIL lawsuits not only promoted awareness of basic human rights but also raised issues such as tax payers' right to monitor government expenditures and every citizen's right to ask the government to release information. As one lawyer argues, PIL is very useful in nurturing Chinese people's "constitutional awareness", which includes awareness of their human rights, awareness of the sanctity of contracts, awareness that the people are the masters of the country, awareness that citizens should supervise the government, and the preparedness to go to court to defend their rights (Hu, 2006).

5) Improve the professionalism of courts and establish new legal procedures

People who have been involved in multiple PIL lawsuits over time reported that in the early days many courts and their staff were at a loss what to do when they received PIL lawsuits, since they had never dealt with PIL before, therefore did not know how to respond. Over time, courts became more used to PIL lawsuits and developed procedures for handling them, which constitutes an improvement in the legal system.

6) Inspire more PIL lawsuits

Nearly every PIL suit has inspired more copycat suits. The demonstrational effect of successful PIL lawsuit is particularly significant, but failed suits can also spur more likeminded people to join the fight and keep the pressure on by filing more

suits. The Ministry of Railways (MOR) has been the target of a number of lawsuits. The price and quality of rail services have drawn numerous complaints over the years. However, because the MOR not only holds a commercial monopoly but also possesses extensive administrative powers, it has been largely impervious to criticisms from rail passengers. PIL lawsuits against the railways have sought to curtail the MOR's asymmetric power over passengers. Some plaintiffs have talked about organizing "relay litigation" against the MOR: after the first person loses his/her case, the next person will file another suit over the same issue, thus the battle with the MOR will continue until victory is achieved.

PIL Activists and Their Strategies

Motivations of people who file PIL lawsuits

Many PIL lawsuits have been filed by lawyers, law students, or legal academics. There are several reasons why legal professionals have been the major force behind PIL. One reason is the high cost of PIL lawsuits relative to the returns. As mentioned before, the chances of winning PIL lawsuits are often slim, while the compensations sought are often very small. In one case the plaintiff sought a 0,3 yuan refund. Although he won the case, his total expenses amounted to over 3.000 yuan, over 10.000 times the reward. Furthermore, the legal proceedings are usually very time-consuming. The 0,3 yuan case dragged on for over two years. Clearly, the financial reward of PIL lawsuits often does not justify the time and money spent. Therefore, ordinary people often lack the motivation to pursue such cases.

An obvious reason why many legal professionals have filed PIL lawsuits is because they have good knowledge of the law. Many ordinary people are not even aware that certain policies

or practices are illegal, therefore cannot think of challenging them in court. Even when they feel that their rights or interests have been infringed upon, ordinary people do not know if laws and regulations exist which allow them to seek redress. Beyond this obvious reason, some legal academics have made PIL lawsuits part of their legal research and teaching. One law professor interviewed for this study used PIL lawsuits as experimental cases for his legal research. His interest in pursuing the cases was primarily academic.

Some lawyers are said to have filed PIL lawsuits to gain publicity for themselves. No lawyer involved in PIL has admitted that he/she did it to gain fame. However, every person interviewed for this report has maintained that this is definitely an important motivation behind many PIL lawsuits. Little-known lawyers hope to gain media exposure through PIL cases, so they can attract more clients. PIL has indeed made quite a few lawyers famous, which gives credence to the argument that PIL may also serve the private interest of individual plaintiffs.

Many legal professionals have also embraced PIL for its potential to help bring about the rule of law in China. On the one hand, PIL creates pressures on powerful government agencies and state monopolies to abide by the law. On the other hand, PIL raises the public's rights awareness and can set examples for ordinary people to use the law to defend their rights and interests. By bringing cases which break new legal ground, PIL can also lead to the improvement of existing legal procedures (Huang, 2006).

Who are PIL activists?

Although many people have filed PIL lawsuits, not every one of them is considered a PIL activist in this report. Here the label of activist is reserved for those whose interest in PIL goes

beyond winning a single case. They tend to have been involved in more than one PIL lawsuit, even though they may not have filed all the lawsuits themselves. Here the term “PIL activists” also applies to people who have used PIP instead of PIL to promote legal and social change. As Chinese legal scholars have argued, PIL and PIP all constitute “public interest law practice” (Huang, 2006). As will be discussed below, in many cases PIP may be the only avenue for mounting a legal challenge to questionable government policies and can have the same impact as PIL.

In addition to individual activists, some legal aid centers and law firms have also played an important part in PIL. These include the Impact Law Firm, the Beijing Legal Aid Office for Migrant Workers, the Peking University Women’s Law Studies and Legal Aid Center, and the Beijing Dongfang Public Interest and Legal Aid Law Firm which was set up specifically to conduct research on PIL and represent PIL plaintiffs.

Strategies of PIL activists

1) Publicize PIL lawsuits through the media

Because losing a case in court does not necessarily mean losing the cause, whether they will win or not is often not an important consideration for PIL activists when choosing their cases. One lawyer’s remark is fairly representative of the views of PIL activists: “With PIL lawsuits, as long as the court has accepted a case and the public has paid attention to it, the case is won”.

For PIL activists, drawing public attention to their cases is not only a key objective but also a key strategy. The media have been an important weapon for Chinese lawyers. When their clients face powerful local authorities or businesses in lawsuits, lawyers often try to use media exposé to generate pressure on the courts and their clients’ opponents. Lawyers cultivate good

relations with journalists. Law firms with extensive contacts in media circles are often more likely to attract clients. In PIL cases, there is usually massive power asymmetry between the plaintiffs and the parties they litigate against, therefore activists attach even more importance to publicity through media coverage. When there is sufficient popular support for their demands, even if they lose the court cases, the pressure of public opinion may still force a change to the policy or practice which they seek to challenge, as has happened in many PIL cases. Even if no immediate change occurs, through media involvement at least they have put the issues under the radar of public scrutiny, which makes the realization of their goals at a future point more likely. Because publicity is so important to PIL, activists often choose their cases carefully, going after issues which are newsworthy.

2) Organize workshops on PIL lawsuits

The strategy of publicizing cases through the media is often used by PIL activists in combination with another strategy—organizing workshops on their cases—. PIL activists invite like-minded legal professionals to these workshops, who help defend the lawsuits from a legal point of view. While favorable media coverage serves to mobilize public opinion in support of the lawsuits, these workshops add the weight of expert legal opinion to the activists' claims, creating further pressure on the courts and the defendants in the lawsuits. In addition, the workshops themselves can be the subject of media reports, generating more publicity for the cases.

3) File more similar lawsuits

The idea of “relay litigation” against the MOR mentioned earlier is a good example. One PIL activist, Hao Jinsong, has advocated a similar tactics, which he calls “multiple litigation”—either one person repeatedly goes to court over the same issue,

or several people simultaneously go to court over the same issue—. These tactics by PIL activists can generate tremendous pressure on the courts and the defendants. Hao Jinsong sued the railways three times for failing to provide him with formal receipts for his purchases on trains: He lost the first lawsuit and the subsequent appeal; his second suit was rejected by the court; but the third suit ended in his victory.

4) File related lawsuits to support the core lawsuits

Many PIL lawsuits have involved such extensions of the original lawsuits. For example, in Hao Jinsong's case, in addition to suing the railways, he also sued the State Administration of Taxation (SAT). Since Chinese tax collectors use sales receipts to assess the profits of companies, not having receipts means that taxable profits are unregistered. Hao therefore reported the MOR's failure to provide passengers with receipts as a tax evasion problem to the SAT and asked the SAT to take action against the MOR. When the SAT ignored Hao's request, he sued the SAT for nonfeasance.

5) Public interest petitioning (PIP)

Amid his lawsuits against the railways, Hao Jinsong also sent a petition to the National People's Congress (NPC) to review the unconstitutional nature of the courts where his cases were heard. Currently, lawsuits against the railways have to be judged in special Rail Transportation Courts whose operational costs and staff salaries are all paid by the railways. Citing the clause in the constitution that courts should be independent, Hao argued that the rail transportation courts could not be expected to give fair trails to plaintiffs suing the railways, and should therefore be abolished.

Like Hao, a number of PIL activists have used both litigation and petitions to pursue their goals. Petitioning has become an

important strategy for China's public interest law practitioners as a result of the deficiencies of the current legal system, for example, the high threshold for establishing the standing of plaintiffs, which has allowed the courts to throw out many PIL lawsuits. PIL lawsuits addressing environmental issues have been particularly difficult to file, with the courts routinely rejecting cases on the ground that the plaintiffs have not been directly affected by the environmental problems. When their cases cannot enter the court process, petition often becomes the only remaining legal avenue of redress available to PIL activists.

Petitioning is also the only available judicial procedure when PIL activists seek to challenge government regulations instead of the concrete actions of government agencies or officials. Under current laws, only the latter can be dealt with in court. There is no provision for citizens to sue the government or its individual agencies over any regulations they promulgate. Citizens who consider any government regulation illegal can only petition the National People's Congress to review that regulation. The most famous public interest petition was submitted by three legal scholars in 2003 after a university graduate was mistaken for a "vagrant" and taken into a detention centre where he was murdered. In their petition, the legal scholars charged that the legal basis for the detention of vagrants, *the Measures for Internment and Deportation of Urban Vagrants and Beggars* promulgated by the State Council in 1982, was unconstitutional. Shortly after their petition, the State Council abolished the *Measures*. This case has encouraged many other PIL activists to petition the NPC to review the legality of particular government regulations or policies.

6) Public interest lobbying

In addition to litigation and petitioning, PIL activists also have lobbying as a possible tool. The Beijing University Women's Law Studies and Legal Aid Center has used lobbying to address a number of women's rights protection issues, including the right of female graduate students to have children while pursuing their studies. Although female students are not prohibited by any law to have children, in reality they have often been forced to choose between children and their studies by their universities. A pregnant female student who was forced to quit her PhD program turned to the Center for help, but she was unwilling to sue her university. Without a plaintiff, the Center could not bring a case to court. It could not petition legislative bodies either, since there was no illegal regulation involved. Therefore the Center organized a workshop and mobilized media coverage to publicize the issue –the same tactics it would use to fight a PIL lawsuit–. Through these activities, the Center successfully influenced the revision of a Ministry of Education policy which had previously encouraged many universities to set their own rules banning female graduate students from having children.

The “Legalization of Political Issues” and the “Politicization of Legal Issues”

Most PIL activists have avoided directly addressing politically sensitive issues. As Huang points out, most PIL lawsuits concern the protection of consumers' rights and interests. Even the lawsuits which defend constitutional rights tend to focus on relatively less sensitive rights and principles such as anti-discrimination and the right to education while steering away from political rights (Huang, 2006). This demonstrates the political savvy of PIL activists. Even though many lawsuits are ostensibly about consumer rights or similar non-political issues,

they can still have an impact on contemporary political life.

A good example is Hao Jinsong's lawsuits against the MOR. Although they were about a customer insisting on his right to obtain receipts, actually they helped the government, since by not giving out receipts the MOR had been able to pay less tax into state coffers. Therefore, while his lawsuits would hurt the MOR's interest, they would serve the interest of the state. Hao had deliberately taken on the MOR over such an issue in order to increase his chance of winning the lawsuit, but his purpose in bringing the lawsuits was not to help the government improve its tax collection. As Hao explained, through PIL his goal was to promote democracy, the rule of law, and "citizenship consciousness". It was no accident that he targeted the MOR. The MOR was a very powerful institution, "a strong fortress". If an ordinary citizen could defeat the MOR in court, then it would greatly inspire others. Even the fact that it took three attempts to win the case should be viewed positively, since it would make people aware that the promotion of democracy and rule of law required determination, perseverance, and a dauntless spirit.

Like Hao, many PIL activists may have chosen non-political issues, but their lawsuits can have major political significance. For example, a well-known lawsuit against the MOR for raising ticket prices without holding a public hearing first is often described as a consumer rights case, but it educated the public about the government's obligation to consult the public before making certain decisions. Another lawsuit involving a peasant suing a government agency for purchasing two new cars helped to popularize the idea that every citizen was a taxpayer and as such had the right to supervise the government's expenditures. As in Hao's case, many PIL lawsuits are the result of careful planning by activists. Often, they decide to promote a right, a principle, or a practice first before looking for a concrete legal

case which can be used to set an example of that right, principle, or practice. Sometimes the planning for a lawsuit also involves finding somebody who is willing to come forward to file that suit, since the activists themselves may not be the most suitable plaintiffs or do not have the legal standing to file the suit. Therefore, many PIL lawsuits are not spontaneous legal actions but born of the desire of activists to tackle important social and political issues. That is why some activists have described PIL as “social movements based on individual legal cases” and the “legalization of political issues.”

The surge in PIL has occurred against the background of the rise of the “rights protection movement” (*weiquan yundong*). As a Human Rights Watch report tells:

Made up of an informal assemblage of lawyers, legal scholars, journalists, and Non-Governmental Organization (NGO) activists, the *weiquan* movement aims to uphold through legal activism and litigation the constitutional and legal rights of people who are victims of administrative arbitrariness, mostly by predatory and abusive local officials (Human Rights Watch, 2006, p. 5).

The “rights protection movement” has no doubt contributed to the development of PIL, however, it is a wider phenomenon than PIL activism. On the whole PIL activists are cautious not to touch the political bottom line, while “rights protection” appears to have drawn more radical political activists than PIL. PIL activists often stress that they seek to bring progress through rational means and judicial procedures, that they are lawyers or legal scholars, not revolutionaries. While PIL is no ordinary legal activity, it is not political pressuring or protest either. Even though PIL may address social or political issues, it is still legal action, not political action.

Nevertheless, many PIL lawsuits clearly have political implications. As one legal professional said, many PIL activists cherished political ideals, only some have hidden their ideals more deeply than others. Through the legalization of political issues, some people have found a new channel for promoting political change. In this sense, for some people at least, PIL constitutes a new form of political activism. Even for those PIL activists who have more limited goals and have taken up PIL essentially for its value in helping to improve the current legal system, there is still an element of the “politicization of legal issues” when they mobilize public opinion to help fight their cases.

Some legal professionals have criticized PIL activists’ strategy of using media coverage and workshops to generate pressure on the courts and the defendants. They say the mobilization of public opinion and comments by legal experts to support their cases amounts to attempts to influence the outcome of court proceedings through extrajudicial means. Although these strategies are not used by PIL activists alone, and are in fact commonly employed by lawyers and litigants in all kinds of lawsuit, they are particularly important to PIL activists given the nature of PIL lawsuits –they are often extremely difficult to win and their effects are often achieved outside the courtroom–. For this reason, although the politicization of legal issues may also happen in other types of litigation, it tends to be more pronounced in PIL cases.

While the criticism that people who claim to be interested in promoting the rule of law should not use any extrajudicial methods to aid their efforts has its validity, it has failed to take into account the deficiencies of the current legal system. Under the current system, the separation of the judicial and executive branches of the government is far from complete. Instead of deciding cases solely on their legal merits, the courts often take

many other factors into consideration. As one veteran legal professional complains, the courts have too many responsibilities these days: they need to help maintain social stability; they need to facilitate the implementation of party policies; they also need to support economic development goals. As a result, the courts themselves often do not act within the framework of law. Under the circumstances, the politicization of legal issues may be the most effective method for PIL activists to achieve their objectives, even if, paradoxically, the objective is to promote the rule of law.

Conclusion

The development of PIL appears to be still in its early days. The interest in it is still growing. Many conferences, workshops, and forums are being organized to discuss it. Proposals are being put forward to change the standing rules to allow individuals or organizations to file lawsuits in the name of protecting public interest, instead of presenting their cases as private-interest-motivated as required by current laws. The possibility of establishing PIL networks to facilitate the cooperation and information sharing between PIL activists and institutions in different cities is also being explored.

Everybody interviewed for this study agrees that the rise of PIL has been a result of improvements in the rule of law and the growth of people's rights awareness in China. Therefore, with further progress in these areas the space for PIL and broader legal activism is likely to continue to expand. Gradually, lawsuits and petitions dealing with politically more sensitive issues have also emerged. For example, the Impact Law Firm has taken up a case concerning the freedom of association. In this case, Dong Jian sued the Ministry of Health (MOH) for not responding to his application to set up a national NGO devoted to the prevention of ocular diseases. In five years, Dong and his

colleagues sent nine applications to the MOH to approve their planned NGO, but the MOH always refused to give a formal reply. Since the government's current NGO regulation makes approval by relevant government agencies the prerequisite for the establishment of NGOs, the MOH's refusal to give permission has prevented Dong and his colleagues from setting up their NGO (Li, 2006). This is a common problem faced by many people who wish to set up their own organizations. There have been repeated calls on the government to relax the requirement concerning approval by relevant government agencies to make it easier for NGOs to register, but they have been ignored so far. Therefore, Dong's lawsuit has enormous significance as the first ever legal challenge to the government's NGO management policy which has been widely criticized for restricting citizens' freedom of association.

What is the government's attitude towards PIL? In a speech in April 2006, Luo Gan, head of the party's Central Political and Legal Affairs Committee, made the remark that it was necessary to "adopt vigorous measures to effectively prevent hostile forces and people with ulterior motives from (...) carrying out sabotage under the pretence of 'rights protection'" (Luo, 2006). Some foreign observers see it as a sign that the government will crack down on rights protection activities, in which case PIL activism will also be affected, since PIL is also very much about rights protection and can be considered a particular strand of the broader rights protection activism.

On the other hand, some PIL activists, e.g., Hao Jinsong, have received much positive coverage in the official media and have been presented as model citizens whose actions contribute to social progress and the establishment of the rule of law. Hao's interview and article have been published in the *People's Daily*, the official newspaper of the party. In Hao's assessment, the government loves people like him because, when suffering

from injustice, many Chinese people make one of two common mistakes: they either passively endure the injustice or resist it by taking radical or even violent actions. Neither approach is appreciated by the government. Although passive endurance may not create any trouble for the government initially, if the endurance reaches its limit, then it is likely to erupt in even more uncontrollable violence. Therefore, the government hopes that people will follow Hao's example, playing their faith in the legal system, not resorting to violent protests even after losing their lawsuits, and persisting in seeking justice through legal means. Indeed, from the way Hao's "rational rights protection" has been praised by the *People's Daily*, it seems that the government rather welcomes PIL.

It would appear that the government has nothing against PIL in itself and may well see some value in it. However, it is apparently wary of any form of political activism, whether it is linked to rights protection or PIL. Given that PIL activists have come from diverse backgrounds and have different motivations, and given that there are elements of both the "legalization of political issues" and the "politicization of legal issues" in PIL, we can surmise that as long as no clear line is drawn between PIL and political activism, the government will not relax its vigilance against PIL.

Bibliography

Goldston, James A. (2006) "Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges". *Human Rights Quarterly*, 28, pp. 492-527.

Hu, Ming (2006) "Lawyers' participation in PIL is conducive to raising citizens' constitutional awareness", article posted at http://www.findalawyer.cn/lawyers/article/print_article.php?articleID=274

Huang, Jinrong (2006) “A fast unfolding legal movement: observations and comments on the practice of public interest law in contemporary China”, in Beijing Dongfang Public Interest Legal Aid Firm, ed., *Public Interest Litigation*, vol. 1, Beijing: China Jiancha Publishing House, pp. 131-158.

Human Rights Watch (2006) “A Great Danger for Lawyers”: New regulatory curbs on lawyers representing protesters.

Li, Gang (2006) “NGOs and the freedom of association: Dong Jian suing the Ministry of Health for administrative inaction concerning his application to form an NGO”. *China’s Impact Litigation*, 5, pp. 54-61.

Luo, Gan (2006) “Carrying out education on socialist rule by law concepts, strengthening the ideological and political work among the political and legal ranks”. *Seeking Truth*, 433.

Tong, Lihua, ed. (2006) *Who Infringed Their Rights? Protecting the Rights of China’s Migrant Workers: Cases and Analysis*. Beijing: The Law Press.

Women’s Watch-China (2006) *Annual Report*. Beijing: Women’s Watch-China.

Xu, Hui (2006) *Report on the development of public interest litigation in China*. Report distributed at the Third Dongfang Forum on Public Interest Litigation, August 25, Beijing.

Zhu, Xiaofei (2006) “The concept of public interest lobbying”, in Beijing Dongfang Public Interest Legal Aid Firm, ed., *Public Interest Litigation*, vol. 1. Beijing: China Jiancha Publishing House, pp. 98-113.