

# *Empirical Study on Legal Support for Prosecution in Cases Involving the Elderly*

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**Keywords:** Civil litigation; Support prosecution; Cases involving the elderly; Vulnerable groups; Protection of elderly rights

**Abstract:** The importance of the system supporting prosecution in cases involving the elderly is elucidated from the perspectives of safeguarding rights and meeting practical needs. Building upon this foundation and utilizing judicial cases, an analysis reveals several issues in the operation of the system, including vague standards for reviewing support recipients, unclear subjects initiating the prosecution, and lack of uniformity in the methods of supporting prosecution. Suggestions are put forth to address these challenges, emphasizing the need to clarify standards for reviewing support recipients, specify the subjects initiating the prosecution, and define the specific methods of supporting prosecution. This offers theoretical guidance for addressing practical challenges in the implementation of the system.

## 1. Introduction

According to the data from the seventh national population census, the elderly population in China has reached 264.019 million. Due to the physiological and psychological vulnerabilities of the elderly, their rights are often compromised, and their litigation capacity is generally in a disadvantaged position. Supporting prosecution can offer assistance in safeguarding the rights of the elderly and upholding their legal interests. However, in China, the "Civil Procedure Law" only stipulates the principle of supporting prosecution in Article 15, without clear provisions regarding the subjects initiating the prosecution, methods of support, and standards for reviewing support recipients. Scholarly attention has primarily focused on the initiation of support prosecution by the procuratorial organs, with limited emphasis on supporting litigation for the elderly. Given the urgency of protecting the rights of the elderly, it is imperative to propose practical measures to address the existing issues in the system supporting prosecution in cases involving the elderly<sup>[1]</sup>.

## 2. Safeguarding the Litigation Rights of the Elderly through Support Prosecution

Article 15 of China's "Civil Procedure Law" stipulates, "Organs, social groups, enterprises, and institutions may support units or individuals whose civil rights and interests have been infringed upon in bringing lawsuits to the people's court for acts that harm the civil rights and interests of the state, the collective, or individuals." While this provision does not explicitly specify the objects of

support prosecution, protecting the rights of elderly individuals harmed in cases involving the elderly is inherent in its purpose<sup>[2]</sup>. In light of this, the author discusses the importance of support prosecution in cases involving the elderly from two perspectives: safeguarding rights and meeting practical needs.

## **2.1 Concrete Manifestation of Rights Protection**

Firstly, the concretization of the human rights protection philosophy is considered. Human rights, as the name suggests, refer to rights that satisfy the basic needs of every individual. Maslow's "Hierarchy of Needs" categorizes human needs into five levels of importance: physiological needs, safety needs, social needs, esteem needs, and self-actualization needs. Human rights, as rights to fulfill human needs, naturally exhibit a hierarchical nature. For the elderly, categorized as a "special group," their needs primarily fall within the first level of physiological needs and the second level of safety needs. Therefore, the rights to survival and development are paramount basic human rights for them. Through support prosecution, elderly victims can be assisted in initiating legal proceedings, placing them on an equal footing with the opposing party in litigation. This, in turn, enables them to safeguard their legitimate rights through judicial procedures, ultimately ensuring their rights to survival and development.

Secondly, the concretization of the theory of litigation rights protection is examined. Litigation rights encompass three aspects: the right to sue, the assertion of claims, and the defensive presentation. The plaintiff must have the standing of a legitimate party. Assuming the elderly have the standing of a legitimate party, supporting prosecution involves improving the other two aspects. Concerning the right to sue, initiating a lawsuit is especially challenging for the elderly. Although the registration system has replaced the examination system, alleviating the difficulty of initiating a lawsuit, the fact remains that "registered filing" does not imply the abandonment of case examination in China. After the court registers and receives the complaint, issues relevant certificates to the parties involved, it still needs to examine the filing, essentially maintaining the case examination system. As for the assertion of claims and defensive presentation, under the adversarial model, these aspects are crucial<sup>[3]</sup>. The essential premise of the adversarial model is that the parties have the ability to present their issues according to legal elements and submit evidence to request the judge to make a decision favorable to them. However, the cognitive and judgment capabilities of the elderly are often diminished, and they may lack sufficient understanding of their rights, such as the right to debate and dispose, making it challenging for them to assert claims and present a defense. Ensuring the complete protection of the litigation rights of the elderly is the core of supporting them in initiating legal proceedings<sup>[4]</sup>.

## **2.2 Realistic Needs for Support Prosecution in Cases Involving the Elderly**

Firstly, there are deficiencies in the litigation capacity of the elderly. Civil litigation capacity is influenced by legal and medical factors, including the understanding and exercise of disposal rights, comprehension of judicial matters and litigation status, resilience to potentially unfavorable judgments, and memory decline<sup>[5]</sup>. The aging process diminishes the memory, learning speed, and reaction time of the elderly, making it challenging for them to grasp legal terms such as disposal rights in a short period. The psychological resilience of the elderly is also not as robust as that of younger individuals. Physical decline makes the elderly more prone to anxiety, pessimism, depression, and other negative emotions. When their rights are violated, these emotions intensify, making it difficult for the elderly to cope with unfavorable judgments. Therefore, it is challenging for the elderly to obtain relief on their own, and support prosecution can compensate for the deficiencies in rights exercise caused by age.

Secondly, there is insufficient judicial assistance and legal aid systems. Judicial assistance primarily involves the reduction or exemption of litigation costs, but litigation costs in cases involving the elderly are often not high. The legal aid system refers to providing free legal services to parties in economic difficulties. While both legal aid and support prosecution can to some extent safeguard the rights of the elderly, some scholars argue that legal aid has comprehensively replaced support prosecution in terms of function and purpose, deeming support prosecution as optional<sup>[6]</sup>. However, the provisions of the "Legal Aid Law" are relatively general and do not adequately focus on the elderly. The elderly still face challenges in applying for legal aid, including inadequate development of special assistance projects<sup>[7]</sup>. Moreover, we must recognize that the reasons for the elderly refusing litigation are not solely limited to economic difficulties but also include psychological factors such as the disparate social status with the opposing party and fear of insecurity. Therefore, support prosecution cannot be equated with judicial assistance and legal aid<sup>[8]</sup>. Additionally, in some cases, the entity supporting prosecution can assist the parties in applying for judicial assistance and legal aid, strengthening their support prosecution efforts. Many places have practiced the integration of support prosecution and legal aid. For example, the People's Procuratorate of Wenshui County, Shanxi Province, has signed an opinion on establishing a cooperation mechanism for support prosecution and legal aid with the Judicial Bureau of Wenshui County, which can serve as a reference for our consideration.

### **3. Deficiencies in the Support Prosecution System for Cases Involving the Elderly**

While many procuratorial organs in various regions have extensively explored supporting litigation for the elderly, constraints stemming from the principled provisions governing support prosecution contribute to deficiencies in the system for cases involving the elderly. To investigate the current status of the support prosecution system in judicial practice, the author, through the "Judicial Documents Network," set case types, trial procedures, document types, and judgment years as "civil cases," "civil first instance," "judgment," "2021, 2022, 2023," respectively. Using the keyword "support prosecution," a search was conducted, and the results were reviewed, yielding a total of 884 samples supporting the elderly in litigation. Through the analysis of these samples, deficiencies in the support prosecution system for cases involving the elderly were identified, including vague standards for reviewing support recipients, unclear subjects initiating the prosecution, and lack of uniformity in support methods.

#### **3.1. Vague Standards for Reviewing Support Recipients**

Among the 884 judgment documents, various case types were identified, including labor dispute cases, marital and family dispute cases, etc. (see Table 1). Among them, 232 documents explicitly mentioned the reasons for supporting prosecution. The reasons for initiating support prosecution procedures by procuratorial organs can be categorized into two types: the plaintiff belongs to a vulnerable group, or the defendant's actions harm public interests. However, the term "vulnerable group" lacks a clear definition, and in judicial practice, it is often broadly defined based on physiological or physical reasons, with elderly individuals being categorized as vulnerable due to these reasons. This practice blurs the distinction between vulnerable and special groups. Special groups refer to individuals who, due to physiological characteristics and physical conditions, receive special legal protection, including minors, the elderly, women, and people with disabilities. Without distinguishing between the two, most people could be considered vulnerable. It is necessary to define vulnerable groups within the legal context, particularly among the elderly. Regarding public interests, it is a crucial yet ambiguous legal concept susceptible to misuse, necessitating clear specifications on applicable case types. Therefore, if the support recipients are

the elderly, there is currently a lack of substantive standards for review.

Table 1: Statistical Summary of Types of Elderly Cases Supported for Prosecution (2021-2023)

order number	Case type	caseload
1	Labor contract dispute	445
2	Disputes over recourse labor remuneration	120
3	Land lease contract dispute	20
4	Sales contract dispute	14
5	Commercial housing sales contract dispute	6
6	Disputes over the financial entrusted financial management contract	5
7	Contract dispute	4
8	Dispute over transportation contract	2
9	House lease contract dispute	1
10	Service contract dispute	8
11	Dispute over a debt transfer contract	1
12	Dispute over power supply and use contract	1
13	Insurance contract dispute	1
14	Tourism contract dispute	1
15	Construction equipment lease contract dispute	1
16	Dispute over the creditor's cancellation right	1
17	Liability disputes for motor vehicle traffic accidents	139
18	Dispute over the liability of labor providers	11
19	Disputes over liability for medical damage	1
20	Support dispute	76
21	Dispute over the dissolution of the adoptive relationship	1
22	Legal inheritance dispute	1
23	Misprofit dispute	4
24	Disputes over the right to life, health and body	6
25	A total of disputes	1
26	Dispute over collecting compensation fees for contracted land	1
27	Return the original property dispute	1
28	Dispute over liability for property damages	1

### 3.2. Lack of Clarity in the Entity Initiating Support Prosecution

According to the statistics, all entities initiating support prosecution in the aforementioned samples are procuratorial organs. However, legislation explicitly limits the types of cases in which procuratorial organs can support prosecution to public interest litigation cases involving environmental pollution and infringement of consumer rights. This has led to considerable controversy regarding the eligibility of procuratorial organs in private interest litigation cases. Similar to the situation with "organs," the definitions of "social groups" and "enterprises and institutions" are also relatively vague. The "Consumer Rights Protection Law" and the "Trade Union Law" specifically state that consumer associations and trade unions can support litigation

initiated by consumers and workers, respectively. In comparison, the "Law on the Protection of the Rights and Interests of the Elderly" and related laws do not specify which entities and organizations should support the elderly in litigation.

Moreover, the role positioning of the entity initiating support prosecution is also unclear, as evidenced in court judgment documents. Many judgment documents refer to procuratorial organs as the supporting prosecution organ, with a few using the term supporting prosecutor. Additionally, the recording of basic information about the procuratorial organ and the personnel appearing to support the prosecution varies significantly. Some judgment documents explicitly mention the entity initiating support prosecution at the beginning, above the parties involved. In some cases, the entity initiating support prosecution is listed below the plaintiff, above the defendant, typically in the position of the legal representative, and the narrative or recording of the procurator appearing to support the prosecution is placed below the entity initiating support prosecution or in the case description. Some judgment documents completely avoid specifying the role of the entity initiating support prosecution, only expressing the procuratorial organ's opinion on supporting prosecution directly in the main text or briefly describing the support for prosecution by the XX Procuratorate in the case origin. From the cases, it is evident that there is a lack of consensus among judicial authorities regarding the role positioning of the entity initiating support prosecution. Some courts consider the entity initiating support prosecution as a special participant in the litigation when listed together with other litigants, while courts with unclear understanding of the issue do not directly address it.

### **3.3. Lack of Uniformity in Support Methods**

Regarding how to support prosecution, Article 11 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases" stipulates various ways of supporting prosecution, including providing legal advice, submitting written opinions, and assisting in the investigation and evidence collection. The "Working Standards for the Trial of Environmental Public Interest Litigation Cases (Trial)" issued by the Supreme People's Court adds the method of appearing in court to support prosecution. However, these two documents issued by the Supreme People's Court are tailored for environmental public interest litigation, and for cases involving the elderly, the current situation is characterized by a lack of specific rules for applying different support methods.

Due to the absence of clear legislative provisions and varying interpretations of support prosecution, procuratorial organs in different regions exhibit varying degrees of involvement in cases when conducting support prosecution. Among the 884 judgments, 265 judgments recorded that procuratorial organs had a narrow understanding of supporting prosecution, believing that they only need to assist the plaintiff indirectly and do not need to participate directly in the litigation. In these cases, procuratorial organs only submit a "Support Prosecution Opinion" to the court when the parties initiate the lawsuit. In 195 judgments, procuratorial organs had a broad understanding of supporting prosecution, considering that they should support the parties throughout the entire litigation process, leading to representatives attending court hearings. In 10 judgments, procuratorial organs assisted the parties in the investigation and evidence collection. In the remaining 414 judgments, procuratorial organs were only mentioned as the supporting prosecution entity or supporting prosecutor without specifying the nature or extent of their involvement.

## 4. Standardization of Support Prosecution in Elderly Cases

### 4.1. Clarification of the Review Standards for Support Objects

The clarification of review standards for support objects aims to address the conditions under which support should be provided to the elderly. From both public and private perspectives, the analysis should be conducted.

In terms of public interest, the essence of civil support prosecution is to protect societal public interests<sup>[9]</sup>. Therefore, if the defendant's actions harm public interests, and the plaintiff is unable to or hesitant to file a lawsuit for objective reasons, support for litigation can be provided. It is essential to note that the plaintiff in this context is not the plaintiff in public interest litigation but the elderly person who has suffered harm. The reasons are as follows: the plaintiffs in public interest litigation are organizations or institutions stipulated by law. For instance, according to Article 47 of the "Consumer Rights Protection Law," in cases involving the infringement of the legitimate rights and interests of numerous consumers, consumer associations can file lawsuits in people's courts. Similarly, the "Environmental Protection Law" in Article 58 stipulates that qualified social organizations can initiate environmental public interest litigation in people's courts<sup>[10]</sup>. However, for public interest litigation regarding the protection of the rights of the elderly, the law does not specify the plaintiff, and only procuratorial organs can initiate public interest litigation related to the elderly based on the fallback provision in Article 58 of the "Civil Procedure Law." Given that procuratorial organs, as the plaintiffs in public interest litigation, have the advantage of their own, there is no need for additional support<sup>[11]</sup>.

In cases involving public interest, if elderly individuals initiate litigation for the purpose of protecting their rights, even though the form of litigation is essentially private, supporting prosecution can increase their motivation for safeguarding their rights and the likelihood of success, indirectly protecting public interests. Therefore, supporting the elderly in initiating litigation in public interest cases is justifiable. After clarifying the above issues, due to the vagueness of the concept of public interest, it is necessary to define relevant types of cases. Cases supporting the prosecution of elderly individuals for the protection of public interest can be divided into two categories: protection of elderly rights at the family level and protection of elderly rights at the public level. For example, cases affecting the functionality of the family, on the surface, impact the realization of family functions, but at a deeper level, they are related to maintaining public order. In the public realm, support for prosecution can be provided for prevalent issues affecting the rights of elderly groups in areas such as elderly care services, health products markets, tourism, and leisure 错误!未找到引用源。

For private interest cases, supporting the elderly in prosecution must meet two conditions: first, respecting the elderly's own wishes; second, the elderly individual receiving support must belong to a vulnerable group. Respecting the elderly's own wishes is self-evident, and the focus is on determining whether the elderly person belongs to a vulnerable group. The method of interpreting vulnerable groups through textual interpretation can be applied. The original meaning of "power" (shì) is power or influence, including political and social power. In a certain sense, vulnerability implies a lack of power, i.e., an inability to maintain a minimum standard of living or protect one's legitimate rights and interests independently or through family support<sup>[12]</sup>. Based on this, vulnerable elderly groups can include several scenarios: receiving the minimum living allowance, being financially supported by the government in social welfare institutions such as nursing homes, facing economic difficulties due to natural disasters or other uncontrollable reasons, being unable to afford legal consultation fees, being migrant workers in urban areas, and other elderly individuals who, based on individual cases, require legal support and assistance due to their social status and living

conditions. Only elderly individuals belonging to vulnerable groups have the necessity for support in initiating litigation.

#### **4.2. Clarification of the Supporting Prosecution Entity**

Grassroots mass autonomous organizations are the primary supporting prosecution entities. Although neighborhood (village) committees are not categorized as institutions, social organizations, or enterprises, they serve as a supporting prosecution entity with legal and practical foundations. Legally, Article 7 of the "Law on the Protection of the Rights and Interests of the Elderly" mentions that grassroots mass autonomous organizations should safeguard the rights and interests of the elderly and provide services for them. In terms of practical foundations, firstly, members of neighborhood (village) committees are elected by the local population through voting, providing a degree of autonomy. Secondly, these committees engage in numerous mediation activities, forming the foundation of a preliminary legal protection system for the elderly. Lastly, allowing neighborhood (village) committees to act as supporting prosecution entities is a recognition of their work, enabling them to actively participate in social governance.

The civil affairs department is the secondary supporting prosecution entity. Firstly, Article 6 of the "Law on the Protection of the Rights and Interests of the Elderly" clearly stipulates that institutions responsible for elderly work at or above the county level of the people's government should be accountable for safeguarding the rights and interests of the elderly. The civil affairs department is responsible for elderly work, including ensuring the basic rights and needs of the elderly. Secondly, the work of the civil affairs department is closely related to public interests, making it easier for them to engage with the elderly and understand their difficulties. Lastly, the government has strong credibility among the elderly population, and support for prosecution by the civil affairs department can gain the trust of the elderly community, facilitating their work.

Procuratorial organs, based on their unique characteristics, represent the final line of defense for supporting prosecution<sup>[13]</sup>. In other words, "institutions" should include procuratorial organs. The reasons are as follows: firstly, laws such as the Constitution grant procuratorial organs supervisory authority, and supporting prosecution by procuratorial organs is a necessary extension of exercising their supervisory rights. Secondly, procuratorial organs, as supporting prosecution entities, possess unique advantages. Compared to other entities, procuratorial organs have professional talents and extensive experience in supporting prosecution, making them more conducive to carrying out their work. Finally, in practice, supporting prosecution by procuratorial organs has achieved positive legal results. Out of 884 judgments, 875 fully or partially supported the litigation requests. This indicates that the litigation requests supported by procuratorial organs mostly received court support, effectively safeguarding the legitimate rights and interests of the elderly.

#### **4.3. Methods of Supporting the Elderly in Initiating Civil Litigation**

In defining the meaning of supporting prosecution, which serves as a fundamental principle in civil litigation guiding the entire legal process, a broad interpretation should be applied. However, this support should be limited, respecting the parties' autonomy without infringing on their disposal rights. With this understanding of supporting prosecution, the methods of support should include the following:

##### **1) Providing Legal Consultation Services**

Supporting prosecution entities can, at the request of the elderly involved in litigation, explain various litigation processes such as the preparation of legal documents, evidence presentation, and cross-examination. This helps enhance their understanding of legal proceedings, enabling them to make informed choices that align with their current circumstances.

## 2) Submitting Supporting Prosecution Opinions

This is the most widely used method in practice. It involves the submission of a legal document to the court after the procuratorate, having reviewed and determined that the case meets the criteria for supporting prosecution, decides to support the litigation. This document primarily explains the reasons for the litigation request and legal grounds.

## 3) Assisting in Investigation and Evidence Collection

The key to the court's decision-making process is the determination of case facts, which requires supporting evidence. Given the challenges elderly individuals may face in gathering evidence, assistance from supporting prosecution entities in investigating and collecting evidence becomes crucial. Support can include actions within their official powers, such as copying or retrieving relevant materials and questioning parties involved. It's important to note that the evidence submitted by the procuratorial organ must undergo on-site verification to be considered a basis for judgment.

## 4) Appearing in Court to Support Prosecution

There is substantial debate in academia about whether procuratorial organs should appear in court to support prosecution. Some scholars argue that if prosecutors attend court merely to state their opinion in support of prosecution, it would result in a waste of judicial resources, and they propose restricting this method in principle<sup>[14]</sup>. On the contrary, opponents argue that sending prosecutors to court is the best way for procuratorial organs to support prosecution, as it maximally protects the legitimate rights and interests of the parties involved<sup>[15]</sup>. The author believes that in the face of direct confrontation between the supported elderly person and the opposing party in court, the absence of the supporting prosecutor may instill fear in the elderly, diminishing the effectiveness of support. As for the courtroom activities such as participating in debates and cross-examinations that arise from appearing in court, it should be evaluated based on the litigation capacity of the elderly individual, with a general principle of not allowing their participation in such activities.

## 5. Conclusion

Elderly individuals are valuable assets to society, representing a significant human resource in Chinese society. To ensure the protection of their legitimate rights and interests, efforts should be intensified in supporting the litigation endeavors of the elderly. Currently, the system supporting litigation involving the elderly in China faces numerous challenges, largely stemming from the inadequacy of relevant legal frameworks. Therefore, it is imperative to address issues by clearly defining the criteria for reviewing supported cases, specifying supporting entities, and outlining concrete methods of support. By refining the system supporting litigation involving the elderly, we can pave the way for a secure and fulfilling late life for senior citizens.

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