

Exploring the Prosecution's Litigation on Revocation of Minor's Custody Right by Procuratorial Authorities

Bo Bai, Yuyan Guo

School of Taiyuan University of Science and Technology, Taiyuan 030000, China

Abstract

Currently, minors are frequently victimized by their guardians. As a system that can directly and effectively reduce the continuous harm of minors in the field of guardianship, the revocation of guardianship of minors, in practice, its lack of initiative, and even in a long-term state of inactivity. The reasons for this are mainly the influence of traditional concepts and the lack of guardianship capacity. To mention its countermeasures, it is necessary to further clearly incorporate cases in the field of guardianship revocation into the scope of cases of prosecutorial public interest litigation. Due to the inherent advantages of the procuratorate, it is fully justified and reasonable for the procuratorate to conduct public interest litigation to revoke guardianship. Procuratorial authorities to start the revocation of guardianship public interest litigation, must uphold the prudence, follow the principle of modesty, at the same time, in not denying the other subjects have guardianship revocation at the same time, the procuratorate to minors caused serious physical and mental infringement of guardianship behavior directly revocation of the power to file a lawsuit, in addition to other infringement of guardianship behavior, the procuratorate to the bottom of the responsibility. Ensure that the rights and interests of minors in the field of guardianship protection is maximized.

Keywords

Guardianship Revocation; Public Interest; Procuratorial Public Interest Litigation.

1. Raising of the Issue

Minor guardianship revocation system that when the minor's rights and interests by the guardian of the infringement, the subject has the right to file a minor guardianship revocation of the power to file a minor guardianship revocation lawsuit. As an important system for the protection of the rights and interests of minors, the system of revocation of guardianship of minors has made clear provisions on the subject of the application for the revocation of guardianship qualifications, legal grounds, etc. The General Principles of the Civil Law of 1986 established the system of revocation of guardianship, and the Civil Code, the Law on Protection of Minors, the Law on Counteracting Domestic Violence, and its regulations, such as the Opinions on Several Issues Concerning the Treatment of Violation of the Rights and Interests of Minors by Guardians in Accordance with Law, were put into effect in 2015.

However, to this day, the reform of the guardianship revocation system is not encouraging. Although the General Principles of Civil Law established the guardianship revocation system in 1986, it was not until 2015 that the first case of revocation of parental guardianship by a public authority, i.e., the civil affairs department, took place [1]. In the process of practice, often due to the characteristics of guardianship with a high degree of family autonomy and the influence of traditional concepts such as "family scandal can not be publicized", it is not possible to correct the behavior of the aggressor in a timely manner, and the dilemma of discovering problems in the revocation of guardianship is difficult to find out the problem of the problem

of late has always been a constraint on the implementation of the implementation of the system of revocation of guardianship and implementation of the system, such as the case of Hunan Province, 2017 The typical cases of guardianship revocation, such as the case of the theft of a girl abetted by her parents in Daocheng County in 2017, the case of a father's domestic violence against his minor children in Dangangang, Henan Province in 2018, and the incident of Du's rape of his ward in Sichuan Province in 2023, all have the same characteristics, i.e., the hidden nature of the aggressor's behaviors and the long-term continuity of the aggressor's behaviors over a long period of time, which further highlight the difficulty of discovering the problem and the problem of discovering the problem late in the process of guardianship.

In conclusion, although the reform of the guardianship revocation system has been clearly stipulated at the legislative level, in reality, the results of the guardianship revocation system have not been significant, with little effect, and there is still a lack of typical cases and practical experience of revoking guardianship in judicial practice. Under these circumstances, in order to realize the goal of "safeguarding the lawful rights and interests of every minor, and putting the guardianship responsibilities of every guardian into practice", it is necessary to study in depth the bottlenecks and difficulties faced by the reform of the system of revocation of guardianship of minors, and to take effective measures to protect the rights and interests of minors, and to promote the reform of the system of revocation of guardianship of minors. The reform of the system has taken root in order to strengthen the protection of rights. With the new provisions of the 2017 Civil Procedure Law on the statutory functions of procuratorial public interest litigation and the 2018 Interpretation of Several Issues Concerning the Application of Law to Procuratorial Public Interest Litigation Cases expanding the scope of cases of procuratorial public interest litigation, and in combination with the principle of maximizing the interests of minors, it is possible to consider the inclusion of guardianship revocation litigation in the scope of procuratorial public interest litigation, and to give the state the status of the ultimate guardian of the minors. The identity of the state as the ultimate guardian of minors. In view of this, this paper intends to start from the realistic dilemmas faced by the reform of the guardianship revocation system for minors, to explore in depth the public interest attributes of the procuratorate to initiate the revocation of the guardianship of minors, as well as the necessity and feasibility of the procuratorate to initiate the guardianship revocation public interest litigation, and then put forward the key initiatives to promote the completion of this reform, in order to realize the modernization of the Chinese litigation system, to provide ideological assistance.

2. The Necessity of the Procuratorial Authorities to Initiate Public Interest Litigation for Revocation of Guardianship Rights

2.1. Cases of Improper Guardianship of Minors Occur from Time to Time

First of all, the supreme people's procuratorate in May 24, 2023 released the handling of cases involving minors to carry out a comprehensive family education guidance work typical cases, which Hu Moumou intentional injury case, Hu Moumou repeatedly due to learning, daily discipline and other issues, Yang Moumou implementation of scratching the head to the wall, hot water, hot water body, pinching, biting the hand, with a coat hanger, roller skates, data line beatings and other injurious behaviors, resulting in Yang Moumou Physical injury, by the identification, the degree of injury, light injury level one. Procuratorial organs through the prosecution sentenced Hu Moumou criminal punishment. Secondly, the Supreme People's Procuratorate in July 5, 2024 issued the implementation of the mandatory reporting system typical cases, a total of five cases, of which case two and case four are minors suffered guardian abuse cases. Case 2 Yang Moujia abuse case, Yang Moujia due to family trivia, learning education and other issues, long-term use of pinch twisting, beating and other ways to abuse Yang Mouyi,

resulting in double elbow joints, the lower part of the right humerus injury. Procuratorial organs through the prosecution sentenced Yang Moujia criminal punishment. In Case 4, Gao Moumou Abuse, Gao Moumou repeatedly beat and abused Yang Mouyi, causing minor injuries. The procuratorial authorities sentenced Gao to criminal punishment by filing a public indictment. Finally, for the above typical cases of guardianship infringement of the punishment results are through the procuratorate to bring a lawsuit to make the guardian was criminally punished, can be clearly found that the procuratorate focus on the criminal case of minors in the protection of privacy and psychology, the guardianship of minors in the civil field of insufficient attention. Combined with the selected representative cases and the overall situation of the guardianship of minors in China, the improper guardianship of minors is not the individual behavior of individual guardians, but has become a situation that occurs from time to time and the degree of individual infringement is serious. Minors are mentally immature, and do not know how to defend their rights and interests in the face of guardianship abuse, in which, in the typical cases cited above, minors were seriously abused by their guardians over a long period of time, and were reported to the police after being discovered by subjects outside the family, a situation which caused serious harm to the physical and mental health of minors.

2.2. Limitations of the Existing Subjects for Revocation of Guardianship

Article 36 of the Civil Code clearly stipulates three circumstances that qualify for revocation of guardianship; Articles 15 to 24 of the Law on the Protection of Minors stipulate the guardian's duties of guardianship, both positively and negatively. The Law of the People's Republic of China on Combating Domestic Violence contains provisions on how to prevent domestic violence from occurring and on mechanisms for dealing with it after it has occurred. The legislative regulation of the guardian's dereliction of duty has been relatively perfect, but in practice, it is often difficult to operate. From the subject of guardianship revocation to analyze, the importance of the guardianship of minors does not mean that the subject of guardianship revocation of the pile, not to be able to bring a minor guardianship revocation of the subject of the more means that the protection of minors the more in place. It is not the case that the number of subjects who are able to revoke the custody of a minor means that the protection of the minor is in place. The duty to revoke the custody of a minor is not the main duty of these subjects, and their concern for the minor's own interests is largely ignored. For example, village committees, neighborhood committees, hospitals, schools, and other subjects have strong characteristics, and defending the rights and interests of minors in the field of guardianship is not a necessary part of their work, which leads to a lack of protection of the rights and interests of minors in the field of guardianship by some of the staff of these subjects. There is often a lack of motivation to protect the rights and interests of minors, whether on the part of the State, social organizations or individual neighbors, as well as a lack of effective means of detecting child abuse in the family, especially by parents. The authorities and organizations provided for in article 36 of the Civil Code lack direct access to custody abuse and objectively find it difficult to detect custody abuse within a short period of time. Due to the hidden nature of the custody relationship itself, when a minor's rights and interests are infringed upon, the corresponding subject with the right to initiate the revocation of custody is not able to detect it in a timely manner. Deep-rooted cultural attitudes such as "a tiger's venom does not eat its children" and "blood is thicker than water" all have an impact on the difficulty of detecting and dealing with violations of minors' rights and interests. At the same time, the fact that a ward's physical and mental health is violated by his or her guardian has a certain degree of continuity over time, and the problem of late discovery of violations and the difficulty of discovering violations has always existed objectively and without a significant solution.

3. Feasibility of Public Interest Litigation on Guardianship Revocation by Procuratorial Authorities

3.1. National Parental Rights Theory

Guardianship system originated in ancient Rome, at first, the guardianship system is to better protect the interests of the family and national interests. With the rise of the human rights movement and the influence of the personal value of the promotion of the reform of the guardianship system gradually by the countries in the guardianship system, the British and American countries on the protection of minors from the cultivation of social labor force to the minors of their own healthy growth of the problem of concern, minors of the guardianship system gradually by the stage of family to the transition to the stage of nationalism. With the change of social and economic structure and family structure, the guardianship system for minors gradually breaks the private nature of family guardianship in the dichotomy of public and private law, and breaks the absoluteness of family autonomy, and family guardianship gradually becomes a kind of obligation of the guardian, and the parents and other relatives become the main subjects with guardianship rights. With the introduction of the theory of family justice and the legalization of the state's parental rights law, the state has gained the rightful subject status to intervene in family guardianship affairs. To this day, the revision of the guardianship system in China's Civil Code and the provisions of the Law on the Protection of Minors on the principle of what is best for minors have provided strong legal support for the State's involvement in intra-family guardianship, and have further manifested the implementation and development of the theory of the State's parental authority in the field of China's guardianship system. Under the national parental authority model, minors are the family's as well as the state's, and the state, as the guardian of minors, has an obligation to supervise the parents of minors as well as other subjects with guardianship rights.

Therefore, under the theory of state parental authority, the state should take the initiative to fulfill its obligation to safeguard the legitimate interests of minors when family guardianship is lacking or when minors are violated by their guardians. Procuratorial organs, as State organs, should initiate public interest litigation against minors in the area of guardianship revocation, in order to ensure the healthy growth of minors.

3.2. The Principle of the Best Interests of the Child

The principle of "maximizing the interests of the child" was first put forward in the Declaration of the Rights of the Child, which clearly states that the basis for the healthy development of children is respect for the best interests of the child. The Convention on the Rights of the Child (CRC), which has been issued since then, further clarifies that the actual rights and interests of children should be given primary consideration in all actions concerning children. The Convention on the Rights of the Child makes corresponding provisions on which subjects should undertake what protection obligations, mainly stipulating that parents have important responsibilities in the process of children's growth, and that the State should take responsibility for the care of children when parents or other guardians are unable to fulfill their duties. At the same time, the Convention on the Rights of the Child explicitly provides for the elimination of harmful traditional practices and the provision of protection and assistance to children who are victims of abuse. Under the principle of maximizing the interests of the child, the guardianship of minors is the responsibility not only of the family but also of the State.

3.3. Inherent Advantages of Procuratorial Organs

First of all, in terms of legislation, the people's procuratorate organization law stipulates that the procuratorial organ can initiate public interest litigation through civil litigation and administrative litigation, which clarifies the proper subject qualification of the procuratorial

organ to initiate public interest litigation, and provides legal basis for the procuratorial organ to initiate public interest litigation against minors [2]. Procuratorial organs have also accumulated a certain amount of judicial experience in handling criminal cases against minors, which has also laid the foundation for procuratorial organs to initiate public interest litigation against minors. From the perspective of the procuratorial authorities, in terms of proof, because the guardianship infringement occurs within the family, it is more difficult to collect evidence, and the procuratorial authorities are more specialized in investigating evidence than other subjects with guardianship revocation qualifications. In order to improve the interface between the public authorities and the social level, and to further implement the supervisory responsibilities of the procuratorial organs, the procuratorial organs have set up juvenile procuratorates, which have formed a procedure for handling cases that is entirely specific to minors, and which have specialized personnel to handle such cases. At the same time, they are more professional in their investigation and evidence-gathering as well as in their participation in litigation, thus maximizing the protection of the interests of minors by the procuratorial organs from the perspective of professionalism.

Through analyzing the existing cases of public interest litigation against minors and combining the cases that violate the rights and interests of minors but have not been explicitly included in the prosecutorial public interest litigation, the procuratorial authorities can combine the characteristics and number of such cases and make targeted subdivisions of such cases, accumulating experience as to whether such cases can be fully or partially included in the scope of the prosecutorial public interest litigation, and further clarifying the scope of the public interest litigation against minors. This will contribute to the further clarification of the scope of public interest litigation for minors. At the same time, the procuratorate has a deeper understanding of the case and masters the relevant evidence, so it can protect the legitimate rights and interests of the minor children in time, and at the same time, it is conducive to saving judicial resources and costs [3].

3.4. Based on Litigation

At present, there is no substantive law in China that explicitly grants the procuratorate the corresponding substantive right of request, and the procuratorate in civil public interest litigation is as a statutory litigant or a party to the lawsuit on behalf of the many victims of substantive rights and interests to implement the lawsuit[4]. There are two categories of parties who litigate to protect the rights and interests of others, the first category is the arbitrary litigation bearer, and the second category is the statutory litigation bearer. Obviously, the procuratorate belongs to the statutory litigant in charge, the statutory litigant in charge includes the bankruptcy administrator, executor, subrogation creditor in the private interest litigation, as well as the environmental protection organization, procuratorate, etc. in the public interest litigation.

In the author's view, the prosecutor's office to exercise the guardianship revocation belongs to the statutory litigation. From the meaning of litigation to take, litigation to take, that is, with the case has an interest in the main body for some reason can not participate in the litigation, so by the third party with no interest in the case to participate in the litigation in the capacity of the parties. Statutory litigation to assume the "in order to protect the interests of the person to be assumed" in the lawsuit, because the procuratorate is the constitutionally mandated supervisory organs, it is based on law-abiding supervision of the statutory powers or duties, on behalf of the state on the infringement of the public interest in the behavior of the lawsuit, to protect or repair the damage to the public interest order[5]. Combined with public interest litigation from the point of view of not being able to participate in the litigation for some reason, we are familiar with, public interest litigation on behalf of the interests of an unspecified majority of people, from the subject of guardianship revocation, due to the diversity of the

subject of the filing of guardianship revocation and the subject of the subject of the mutual shirking of responsibilities, as well as the existence of a large extent of the guardianship revocation of the field of the lack of knowledge of relevant laws, which led to the legitimate rights and interests of the minors who have been infringed upon can not timely When the minor's legitimate rights and interests are not safeguarded in a timely manner and he or she fails to participate in the proceedings, the procuratorate participates in the proceedings as a disinterested third party, exercising the right to revoke custody. The system of taking on the role of litigation provides procedural due diligence support for the procuratorate's action to revoke a minor's guardianship.

3.5. Mature Foreign Experience

From foreign countries on the guardianship revocation and the relationship between the prosecution of public interest litigation, the French "civil procedure code" clearly stipulates that, in addition to special provisions of the law, in the fact of public order, the public prosecutor's office for the maintenance of public order, the procedural code of the different cases involving minors to make different provisions, such cases mainly involves paternity, adoption, parental authority and the guardianship of minors. The Japanese Civil Code also makes corresponding provisions for guardianship litigation, stating that the Public Prosecutor's Office may bring a family lawsuit as a plaintiff or applicant in cases such as revocation of guardianship. It can be understood that the relevant legal provisions in Japan include guardianship revocation in the field of family lawsuits, and support the system of prosecutors taking the initiative to file lawsuits on guardianship revocation. The United Nations Convention on the Rights of the Child specifies that minors under 18 years of age have the basic rights to survival, development and participation, that parents have the primary obligation to raise and develop their children, and that organizations, including the judiciary, may intervene in the family's raising and development of the child when appropriate. It is clear that there are no mandatory provisions in foreign countries on whether guardianship revocation cases must be litigated by the procuratorial authorities, which are relatively lenient and focus more on resolving the problems posed by guardianship revocation cases through litigation.

4. The Procuratorial Authorities to Bring the Guardianship Revocation Public Interest Litigation Facing the Dilemma

4.1. The Absence of a Public Interest Litigation System to Revoke the Guardianship of Minors.

When minors are subjected to guardianship infringement, the subject with the right to revoke guardianship neglects to exercise its rights, the procuratorial organ can issue a procuratorial recommendation to urge the relevant subject to apply to the court to revoke the guardianship qualification of the improper guardian. Although the law provides that the procuratorial authorities have the authority to urge the relevant subject to fulfill his or her obligations, in practice, the procuratorial recommendations are not mandatory in this type of situation, so that they are not very effective. As mentioned above, due to the characteristics of village committees and neighborhood committees, the protection of the rights and interests of minors in the field of guardianship is not a necessary part of the work of these bodies, which leads to a lack of protection of the rights and interests of minors in the field of guardianship by some of the staff of these bodies. And in the protection of the rights and interests of minors, with the revocation of the guardianship of minors in the subject generally lack of initiative, and will not be the first time to actively find the rights and interests of minors in the field of guardianship, there are also difficult to find minors by the guardianship of the situation of infringement. The abuse cases of Gao Moumou and Yang Moujia mentioned above were both brought to the attention of

schools and teachers only after the victimized minors had already demonstrated obvious physical mobility problems, which shows that the hidden nature of custody abuse is extremely strong, and that the duration of custody abuse cannot be brought to the attention of subjects other than the family within a short period of time.

According to the above typical cases issued by the supreme people's procuratorate and the special characteristics of minors, the infringement of the rights and interests of minors is no longer enough to be an infringement of the individual, but also a challenge to the social order. The author believes that the revocation of the custody of minors should belong to the category of public interest litigation, the child is not only the children of the family, but also the children of the country. Therefore, the absence of public interest litigation system to revoke the custody of minors will affect the protection of the rights and interests of minors, affecting the smooth operation of a healthy social order.

4.2. Uncertainty as to the Scope of Cases of Revocation of Custody of Minors.

Due to the number of subjects who have the right to revoke a minor's guardianship, there is no clear standard on the conditions of revocation of a minor's guardianship, and there is no clear basis for the seriousness of the infringement and the continuity of the infringement in time, which can easily lead to the contradiction between the family's right to privacy and the revocation of guardianship filed by other subjects, and in the end, what kind of infringement of guardianship should be filed by the village committee and other grassroots mass self-government organizations. What kind of guardianship infringement by the village committee and other grass-roots mass self-governance organizations to file a guardianship revocation lawsuit, which degree of guardianship infringement by the procuratorial organs to timely file a guardianship revocation lawsuit. In addition, how to harmonize the order of filing guardianship revocation suits between the procuratorial authorities and other subjects with guardianship revocation suits, as well as the question of the level of authority. How to solve the problem between the procuratorate and other guardianship revocation subjects after giving the procuratorate the right to file guardianship revocation public interest litigation, and how to give full play to the advantages of the procuratorate and improve the enthusiasm of other subjects. On the basis of the public interest litigation for guardianship revocation initiated by the procuratorial authorities, it is crucial to clarify the scope of cases in which the guardianship of minors is revoked.

5. System Construction of Public Interest Litigation on Revocation of Minors' Guardianship Initiated by Procuratorates

5.1. Adherence to the Principle of the Best Interests of the Minor

The Convention on the Rights of the Child clearly stipulates the principle of the best interests of the child, regardless of what criteria are relied upon to make any decisions concerning children, should be adjusted based on their age and developmental characteristics, and in response to changing social customs, values and circumstances, to respond to the changing needs of minors to make a reasonable response[6]. The principle of maximizing the interests of minors is clearly set out in China's Civil Code, which, in terms of subject matter, refers not only to the interests of a single minor, but also to the interests of the majority of minors, in line with China's public interest litigation provisions; in terms of the matters covered, the maximization of the interests of minors emphasizes the protection of the interests of minors in a holistic manner, including the physical and mental health of minors, their growing environment and other aspects; the Law on the Protection of Minors provides for the protection of minors in all aspects, including the physical and mental health of minors, the environment in which minors grow, etc. At the same time, article 17 of the Family Education Promotion Act requires parents

or other guardians to create a good, harmonious and civilized family environment, to respect differences in the implementation of family education, to communicate on an equal footing, to provide scientific guidance in accordance with age and personality characteristics, and to show respect, understanding and encouragement[7]. Taken together, the author believes that, in the case of guardianship revocation, the principle of the most favorable to minors must be based on the principle of respecting the special characteristics of minors, protecting the environment of minors' growth, using extraterritorial law as a reference, and pursuing the maximization of the legal benefits for the purpose of empowering the procuratorial authorities to take the initiative in initiating a procuratorial public interest litigation for the revocation of guardianship, and to achieve the maximization of the interests of minors in the field of guardianship revocation, in terms of time limit as well as quality. The interests of minors in the field of guardianship revocation shall be maximized in terms of timeliness and quality.

5.2. Defining the Scope of Public Interest Litigation for the Revocation of Guardianship of Minors

According to China's public interest litigation law, public interest litigation can only be initiated in cases involving public interest. From the concept of public interest, public interest is a certain social conditions or within a specific scope of the interests of the majority of the subject of the unspecified aspects of the same[8]. Public interest can be divided into general public interest and special public interest, general public interest refers to the interests of the community, the special public interest includes the national or public meaning as a public body's task to protect the interests of individual members. As a special group, minors meet the category of special public interests and deserve special protection. From the subject analysis with custody revocation, civil affairs department on behalf of the state to carry out the authority to intervene in the revocation of parental custody, if not from the perspective of social public interest, this kind of state intervention will obviously lack of legitimacy and legitimacy [9]. Taking the law on the protection of martyrs as a reference, the procuratorial authorities have the authority to initiate civil public interest litigation against the infringement of the names, portraits, reputations, and honors of martyrs, which is detrimental to the public interest of the society. The public interest is not necessarily entirely the interest of the unspecified majority, and with the development of society, the concept of public interest does not necessarily refer to the physical damage caused alone, but should also incorporate aspects that are conducive to the development of the country's soft power and the core socialist values into the criteria for defining the public interest. At the same time, with the introduction of the theory of family justice and the development of the theory of parental authority of the State, the involvement of the State in guardianship matters within the family is justified. Minors are no longer the private property of the family, but also children of the State. Therefore, the revocation of custody of minors should be included in the scope of public interest litigation.

5.3. Specific Discussion of the Scope of Cases

According to the Opinions on Several Issues Concerning the Handling of Guardians' Infringement on the Rights and Interests of Minors in accordance with the Law, the types of cases in which guardians have infringed on the rights and interests of minors are divided into the following categories: sexual abuse of minors, betrayal, abandonment, maltreatment, and violence, abetting and using minors to commit unlawful or criminal acts, coercion, enticement, and use of minors to beg for money, as well as failing to fulfill their guardianship duties to the point of seriously endangering the physical and mental health of minors. There is no exhaustive list of the types of cases in which a guardian has violated the legitimate rights and interests of minors, such as when a guardian has violated a minor's right to education. The dilemma faced in resolving the issue of revocation of a minor's guardianship is reflected in how to define whether or not guardianship abuse is a serious violation of the minor's rights and interests, and

to what extent the guardianship abuse meets the conditions for revocation of the guardianship. The author believes that the guardianship revocation of minors should be broken down according to the complexity of the case, the degree of harm, in accordance with the principle of the most favorable to the minors on the basis of the pursuit of judicial efficiency, to distinguish between which guardianship revocation cases can be included in the prosecution of public interest litigation, which guardianship revocation cases are not appropriate to be included in the scope of the prosecution of public interest litigation.

5.3.1. Should Be Included

Starting from the situation of guardianship revocation, combined with the professionalism and efficiency of the procuratorate itself, the author believes that the following kinds of minor guardianship revocation cases should be included in the procuratorial public interest litigation: Firstly, the opinions on dealing with infringement of behavior clearly listed in the molestation, rape, violence and other crimes that directly cause serious bodily harm to minors. That is to say, the guardian's guardianship infringement of the damage caused to the minor, to the extent that the public prosecution, the procuratorial organs can directly file a guardianship revocation of the lawsuit.

Secondly, for the other circumstances of the guardianship revocation. That is, the actions of the guardian have not caused serious damage to the minor to the extent that they would warrant the filing of an indictment, but the guardian is unable to fulfill his or her guardianship duties due to the guardian's difficult living conditions and other reasons. With the guardianship revocation of the relevant organization did not file a guardianship revocation, based on respect for the family's right to privacy and the saving of judicial resources, the procuratorate can urge to remind them to file a guardianship revocation, if the procuratorate supervise to no avail, the procuratorate directly filed a guardianship revocation of the lawsuit.

5.3.2. Clear Limitations

For the other cases of guardianship revocation mentioned above, the situation can be resolved through private mediation by other organizations such as neighborhood committees and village committees. For such cases, when the relevant organization has not filed a guardianship revocation, the procuratorate shall, after investigating the matter, give the organization a period of time to resolve the problem of guardianship by not prosecuting the case, or by intervening with the organization to change the guardianship by not prosecuting the case. Guardianship revocation has a significant impact on the growth of minors, so, in dealing with guardianship revocation cases, we must uphold the prudence, follow the principle of modesty, that is, "modesty" is the application of the principle of prevention of risk "proportion" of the theory of the response. The author suggests to add a "cooling-off period" system for this kind of situation, to further mobilize the ability of the relevant organizations with guardianship revocation to perform their duties, to increase their participation in the guardianship revocation system, and to give full play to their advantage of having closer contact with the minors' lives. At the same time, from China's national conditions and the unique excellent traditional culture, the ancient saying: "the body hair and skin received by parents", "all good filial piety first", filial piety and respect for parents is a traditional virtue of the Chinese nation, for most of the incorrect education caused by the infringement of physical and mental health behavior and corporal punishment and other violations of the guardian. For the majority of incorrect education caused by the infringement of the physical and mental health of the ward and corporal punishment and other circumstances caused by other legally qualified persons with custody revocation of custody, should refer to the Civil Code, Article 107 of the provisions of the cooling-off period for divorce, during this period, the procuratorial organs to urge the village committee, neighborhood committees and other relevant organizations can be door-to-door to understand the situation and actively resolve conflicts, and to promote the harmony of

family relations, and if the persuasion is unsuccessful, and then the relevant organizations or civil affairs departments provided for in the law. If persuasion is unsuccessful, the relevant organization or civil affairs department, as provided for in the law, will file a complaint with the court for revocation of guardianship.

5.3.3. Assigning the Procuratorial Authorities with Responsibility for the Protection of the Legal Rights and Interests of the Applicant.

When the procuratorial organ finds that there are circumstances that meet the criteria for revocation of guardianship, it shall make a procuratorial recommendation to the relevant organization that has the right to revoke guardianship, so as to respect the applicant's lawful rights and interests; and if the procuratorial organ fails to carry out its duties in accordance with the law, or is unable to safeguard the applicant's lawful rights and interests after carrying out its duties in accordance with the law after making its procuratorial recommendations, the procuratorial organ shall take the initiative in instituting a public interest litigation for the revocation of guardianship, and punish and educate the relevant department for failing to carry out its duties in time. The procuratorate shall initiate a public interest litigation for revocation of custody and penalize and educate the relevant departments that fail to comply in a timely manner.

5.4. Self-improvement within the Procuratorial Authorities

5.4.1. Expanding the Scope of Supervision by the Procuratorate

According to the provisions of Civil Code 36, a guardian can only file a complaint for revocation of guardianship if the guardian has infringed upon the physical and mental health of the minor through positive and negative torts, causing serious physical and mental harm. And the protection of minors law, article 17, "the minor's parents or other guardians shall not commit acts", both contains the civil code 36 provisions of the positive tort, but also extends the scope of guardianship infringement of the right to property is also attributed to the guardianship infringement of the right to property. At this stage, although our laws do not provide for the supervision of the guardianship system, we should be aware of the need to supervise the guardian's performance of guardianship duties. Simply because the guardian in the beginning of the improper performance of guardianship did not get effective guardianship guidance, supervision, so that they do not form a correct understanding of guardianship, resulting in some parents or other guardians in the performance of guardianship duties in serious infringement of the rights and interests of minors[10]. In the author's opinion, the supervision scope of the guardianship of the procuratorial organs should be further expanded, and the behavior of the guardian in performing the guardianship duties should be included in the supervision scope of the procuratorial organs, and at the same time, the management of the legal supervision obligation of the main body of the school, the community, and the village committee and so on should be increased, and the real-time supervision of the body and mind of the guardian should be actively coordinated with these related organizations.

5.4.2. Improvement of the Procuratorate's Internal Juvenile Prosecution Department

Procuratorial organs within the juvenile prosecution department as the procuratorial organs to deal with juvenile cases has an important role, the improvement of the juvenile prosecution department also further for the guardianship revocation in the guardianship to provide the entity protection. In the author's opinion, the improvement of the juvenile prosecution department within the procuratorial organs should start from the following aspects: Firstly, the supervisory power of the juvenile prosecution department should be strengthened, and the working style of "focusing on the judicial handling of cases, light on the supervision of litigation" should be resolutely discarded, and the supervision of the juvenile prosecution, as one of the supervisory functions of the procuratorial organs, should only be a specialized supervision to

promote the improvement of the level of the protection of minors. As one of the supervisory functions of the procuratorial organs, and as a specialized supervision that can promote the level of protection of minors, it can only be strengthened. In the area of guardianship revocation, the specific manifestation of this is the strengthening of supervision of guardianship infringement, and the discovery of infringement of the physical and mental health of the person under guardianship, it is necessary to promptly contact the relevant organization or civil affairs department to file a guardianship revocation lawsuit, or to file a procuratorial public interest lawsuit on one's own. Second, to broaden the channels of supervision, the juvenile prosecution department can set up suggestion boxes or reflect problems through the Internet in communities or schools where minors live regularly, and school staff, community workers, or the wards themselves can respond to the prosecuting authorities through the Internet or by delivering the information on the difficulties they face with respect to guardianship infringement. Third, the level of knowledge of the staff of the juvenile prosecution department should be strengthened, with an emphasis on fostering the learning of the principle of maximizing the interests of minors among the staff of the juvenile prosecution, and adding to the juvenile prosecution team personnel with knowledge of psychology, juvenile delinquency and other aspects of juvenile delinquency. At the same time, improve the quality of service in handling minors' cases, when minors are in a critical state of custody because of their guardians, they should actively give minors a certain amount of care or mobilize the relevant organizations to actively solve the problem.

5.4.3. Strengthening the Connection between Procuratorial Organs and Other Subjects

The inclusion of guardianship revocation in the scope of public interest litigation by the procuratorate does not mean that other subjects with the obligation to file guardianship revocation applications in accordance with the law are idle, but rather that they are intended to provide further safeguards for the healthy growth of minors from the perspective of national guardianship. At the same time, due to the special nature of the guardianship, the procuratorial organs should strengthen the judicial specialization and related organizations social organic combination of judicial protection and social forces, through the organization of social forces can be more efficient and effective to carry out some social investigation, promote the procuratorial organs in a timely manner to handle the case to improve the efficiency. Therefore, the procuratorate should strengthen its ties with other organizations. Specifically manifested in, can establish the minor guardianship information sharing platform, strengthen with the community, the village committee and the school and other related organizations, the procuratorial organ can according to its own advantage, to these related organizations to convey the minor guardianship infringement case occurrence ratio and serious social harm, further enhance the related organizations to participate in the minor guardianship field enthusiasm, will protect the physical and mental health of the minors. as one of the important duties of the organization.

6. Conclusion

Based on the theory of national parental authority and the principle of maximizing the interests of the child, the revocation of the guardianship of minors should be included in the scope of public interest litigation. The protection of the rights and interests of minors should follow the principle of maximizing the interests of minors. Due to the inherent advantages of the procuratorial organs, public interest litigation should be initiated when necessary. Public interest litigation as a new era of innovation and development of the growth of procuratorial work, its scope is constantly expanding. Based on the problems of the current system of revocation of guardianship of minors, it is difficult to find out the problems, and it is difficult to file a lawsuit, which has been restricting the implementation of the system of revocation of

guardianship and its enforcement. Including the guardianship revocation lawsuit into the scope of public interest litigation, the prosecutor's office to file a minor guardianship revocation lawsuit can be a better solution to the problems in the guardianship revocation system. Minor guardianship system is an important part of a country's guardianship system, in order to protect the rights and interests of minors in the field of guardianship not to be infringed upon, must build a perfect minor guardianship system, must continue to improve the system of minor guardianship revocation system. Procuratorial organs to bring a minor's custody revocation not only helps to protect the physical and mental health of minors, but also helps to improve China's procuratorial public interest litigation system.

References

- [1] Jianglian Wang, KE Lizhen. Improvement of guardianship revocation system of minors--Based on the perspective of procuratorial public interest litigation[J]. Journal of Henan University of Finance and Economics and Law,2019,34(04):20-27.
- [2] Wen Zhou. Feasibility Analysis of Prosecutorial Public Interest Litigation on Revocation of Guardianship of Minors[J]. Journal of Culture, 2022,(10):163-166.
- [3] Xiuhua Li. Research on guardianship revocation system under the perspective of family education law[J]. Journal of China Women's College,2021,33(04):33-42.
- [4] Shangang Zhan,Yao Shi. On the Litigation Enforcement Right and Role Orientation of Procuratorial Authorities--Thinking Based on the Nature of Civil Public Interest Litigation[J]. Learning and Practice,2020,(07):70-79.
- [5] Aiwu Chen. On Family Prosecution Public Interest Litigation[J]. Journal of National Prosecutors College,2020,28(05):64-79.
- [6] Hongwei Zhang,Qi HOU. How is it possible to prosecute public interest litigation for juvenile guardianship[J]. Dongyue Lecture Series,2023,44(12):174-181.
- [7] Ningning Yuan. Normative interpretation of the connotation of the principle of most favorable to minors[J]. Social Science Digest,2023,(06):118-120.
- [8] Heng Deng. On the legal nature of non-competition agreement in trade secret protection[J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition),2018,39(02):98-103.
- [9] Ru Qiao. On the role of civil affairs departments in the protection of minors and the improvement of its system--withdrawal of parental guardianship as the perspective of entry[J]. Journal of Henan University of Finance and Economics and Law,2023,38(06):22-31.
- [10] Xiaoxiao Qian,Hongwang SUN. The legal application of the minor guardianship revocation system and its improvement[J]. Law Application,2020,(10):8-20.