

The Third-Party Revocation Action System: Status Quo, Theoretical Controversy and Improvement

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Abstract

The third-party revocation action is a new system established in the Civil Procedure Law of the People's Republic of China of 2012. Although the academic community is quite controversial, it is undeniable that due to the increasing use of the judicial system to infringe on the rights and interests of others. For example, infringement of the lawful rights and interests of the parties or third parties through false litigation, malicious litigation, imposing litigation, etc., the third-party revocation action as a system that can effectively protect the legitimate rights and interests of third parties outside the case has great practical significance in China. Therefore, how to better understand and apply the third-party revocation system has become a problem that must be paid attention to by the current theoretical and practical circles. On the basis of introducing the system of revocation of the third party in China, the article discusses the existing problems such as the scope of the parties, the litigation procedure and the application of similar procedures. The article proposes that the third party with independent claim and the third party without independent claim should be brought into the scope of the third-party revocation action's subject. As for the choice of the procedure, the procedure of first instance should be applied to the trial of the third-party revocation action. When a lawsuit and an application for retrial by an outsider can be applied simultaneously, the litigant can only be allowed to choose one procedure. If the litigant simultaneously initiates a lawsuit for cancellation by a third party and the outsider applies for retrial, the third-party revocation action shall be applied preferentially.

Keywords: the third-party revocation action, civil procedure guarantee, third party outside the case

1. The subject of the Third-Party Revocation Actions in China

According to the third paragraph of Article 56 of the Civil Procedure Law of the People's Republic of China, the subject of the third-party revocation actions shall be a third party with an independent claim and a third party without an independent claim. In addition, the third party shall meet the following three conditions and provide the evidentiary materials: (1) The third party fails to participate in an action for any reason that cannot be attributable to the third party's fault. (2) The legally effective judgment, ruling or consent judgment is entirely or partially erroneous. (3) The errors in the contents of the legally effective judgment, ruling or consent judgment cause damage to the third party's civil rights and interests.

According to the Article 295 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, "failure to participate in an action for any reason that is not attributable to the third party's fault" means the circumstances under which a third party is not listed as a party to an effective judgment, ruling or consent judgment, and is not at fault or not obviously at fault, including: (1) The third party fails to participate in the action because he or it does not know the action. (2) The third party applies for participating in the action but fails to get the approval. (3) The third party knows the action, but cannot participate in the action for any objective reason. (4) The third party fails to participate in the lawsuit for any reason that is not attributable to the third party's fault.

There is a big academic controversy about the plaintiff's litigant statute of a subject the the third-party revocation. At present, there are mainly two viewpoints, namely, "restriction theory" and "expansion theory". The "restriction theory" believes that the subject of the third-party revocation should be based on the interpretation of the meaning of the third paragraph of Article 56 of Civil Procedure Law of the People's Republic of China, statute of a subject of plaintiff only include a third party with an independent claim and a third party without an

independent claim. In some judicial cases of The Supreme People's Court, the "restriction theory" is also adopted.

Case 1¹: Chen Riying sued that Chen Riying and Xie Guiming were married in 1982, and the real estate was a common house after Chen Riying and Xie Guiming married, Chen Riying was the property rights of the common owner. Huang Lifen filed a malicious lawsuit against Chen Riying's husband, Xie Guiming, intending to seize the competing house with unreasonable price. However, the intermediate people's Court of Yangjiang recognised Huang Lifen's claim and transferred the house of Chen Riying's husband and wife common property to Huang Lifen. After the protest of the Guangdong Provincial People's Procuratorate, the Guangdong Provincial Higher People's court made a retrial decision to maintain the decision of intermediate people's Court of Yangjiang. Because of the omission of the co-litigants in the original case, Chen Riying institute a third-party revocation. The Supreme Court holds that only the third party with independent claims and the third party without independent claims in the original lawsuit have the statute of a subject for the prosecution of revocation. Chen Riying and Xie Guiming are husband and wife, and the house of dispute is purchased during the marriage period, which is shared by Chen Riying and Xie Ming Ming. As a result, Chen Riying is not the third person in the case of a contract dispute between Huang Lifen and Xie's house. Chen Riying could not institute third-party revocation of the case.

The "expansion theory" believes that the scope of the the third-party revocation's subject in China is too narrow. All of the third party who is not involved in the original trial should be included in the subject of the third-party revocation. ²Some judicial decisions have also recognized this view.

Case2³: In March 21, 2013, Shanghai Xing Mao Maize Development Co., Ltd. has pledged 80% of the shares of Pinghu's root company and transferred the real right of control to the Zhucheng Best industry and Trade Co. Ltd. However, the legal representative of Pinghu's root company failed to change in time. In the first instance of the original case, Shanghai Xing Mao Maize Development Co., Ltd. did not receive a written notice required by the Pinghu Municipal People's court to participate in the lawsuit, so there was no written application to participate in the first instance litigation. Therefore, it brought up a lawsuit against the third party's withdrawal. The Supreme People's court holds the view of the trial, "The plaintiff's statute of a subject of the revocation action is limited to the third party stipulated in the first paragraph and the second paragraph of Article 56 of the Civil Procedure Law, and the outsider who has evidence to prove that the original case has a false lawsuit and damages its interests. Or the law clearly stipulates creditors who give special protection."

Comparing case 1 with case2, we can see that the Supreme People's court did not form a unified opinion on the subjects of the third-party revocation action. In order to solve the confusion in practice, it is necessary to clarify the scope of the subject through theoretical research. Literary meaning is the starting point of legal interpretation, but also the focus of legal interpretation, the interpretation of any law can not exceed the righteousness of literary meaning. "Any law may give more than two interpretations", Paragraph 3 of Article 56 of the Civil Procedure Law is no exception. It can be understood that the subject of the third-party revocation is limited to the third party with independent claim and the third party without independent claim. It can also be understood that the subject of the third party's revocation includes all the outsiders. Paragraph 3 of Article 56 does not exclude the application of other litigation subjects.

The reasonableness of the interpretation of the text needs to be explored through its purpose. For the purpose interpretation, what the interpreter has to do is to judge the legislative intent of the legal text, that is, to assume the legal interpreter as the legislator, and to infer how the legislator can solve the current problems in the new situation according to the full legal intent and spirit embodied in the whole law. The second opinion of the Legal Committee of the National People's Congress on the Results of the Review of the Amendment (Draft) to the Civil Procedure Law of the People's Republic of China points out that in view of the increasing number of lawful rights and interests of outsiders infringed by malicious actions by the parties concerned, "the infringed party outside the case shall be added to the Civil Procedure Law Relief channels." According to the teleological interpretation the purpose of establishing a third-party revocation in China is to curb false litigation and provide judicial remedy for third parties. Only a third party with independent claim and a third person without independent claim will result in some cases of offenders who have been infringed by false lawsuits being unable to obtain effective remedies, for example, the general creditors whose damages have been denied due to false

¹ Supreme People's Court: No. 160 of [2015].

² YANG Wei-guo: On the Reconstruction of the Rights Relief System of the Third Party in Civil Litigation: With the Proper Plaintiff in the Suit of the Third Party Outsider's Revocation as the Focus, *Humanities & Social Sciences Journal of Hainan University*, 2015, 3

³ Supreme People's Court: No. 684 of [2016].

claims. The creditor is neither a third party with independent claim rights nor a third person without independent claim rights. If the rights and interests are damaged due to false lawsuits, according to the provisions of the Civil Procedure Law of China, it is not a third party. The eligible subject of the revocation of the lawsuit can only rely on the outsider to apply for retrial procedures to protect his or her legitimate rights and interests. The establishment of the third party's revocation system is to enable the outsiders to timely redress the civil rights and avoid the high threshold of retrial. "Limited contraction" is undoubtedly contrary to the legislative purpose of the third party's revocation. Referring to the relevant legislation outside the domain, France stipulates in Article 583 of the Civil Procedure Law that the subject of the revocation of the third party in France is any third party who has an interest in the effective judgment, as long as it is not the party to the original lawsuit and has not entrusted The agent participated in the lawsuit. At the same time, in order to prevent the debtor from maliciously colluding to conduct fraudulent litigation and protect the interests of creditors, the article also stipulates that if the creditor or other rights holder of the party believes that the judgment has impaired his rights, or has other reasons, he may also revoke the third party. Moreover, though the original intention of the establishment of the third party to revoke the lawsuit in France is to prevent the false claims from infringing the civil rights of the third party outside the case, but with the development of judicial practice and theoretical research In-depth, the French third-party revocation has already broken through its original traditional boundaries, and the subject and scope of litigation has continued to expand. The Macao region stipulates that if the final referee is harmed by the third party's interests caused by the intentional or collusion of the parties, then the successor and creditor of any party have the right to file a lawsuit against the third party. .

Judging from the current legislation on the subject of the revocation of the third party in China, the scope of the subject of the third-party revocation has certain lag and limitations, which is not conducive to the settlement of civil disputes and the role of third party revocation. It is suggested that China should expand the subject of the revocation of the third party in the legislation, and the third party who has the independent claim right and the third party who has no independent claim right, other offenders who have an interest in the original judgment.

2. The Litigation Procedure of Third-Party Revocation Actions in China

According to the provisions of the Civil Procedure Law of the People's Republic of China, the court of jurisdiction for the third party to revoke the case shall be the people's court that has made the effective judgment, ruling or mediation. This provision mainly considers that the lawsuit revoked by the third party will often involve false lawsuits. The case is more complicated than ordinary litigation, and the court of first instance has a certain understanding of the case in the process of making a judgment, ruling or mediation. The trial by the court of first instance helps the judge to find out the truth and make the case to be solved completely. After the third party has filed a lawsuit with the people's court, the court shall send the other party within five days from the date of receipt of the complaint and evidence. The other party shall submit a written opinion within 10 days from the date of receipt of the complaint. At the same time, the court shall examine the complaints, evidence materials and written opinions of the other party submitted by the third party, and may also ask the parties if necessary. At the same time, the court should decide whether to file a case within 30 days of receiving the complaint.

After the case is filed, the court shall form a collegiate bench for trial according to the provisions of Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China. This involves a controversial issue, that is, whether the original judges can participate in the collegiate bench. Some scholars believe that for the purpose of judicial convenience and truth finding, the trial judge obviously has more advantages, although it is difficult for the judge of the original lawsuit who will be affected by the original lawsuit to keep the case fair.⁴ However, According to the Supreme People's Court pointed out that the collegial panel of the third party's revocation does not allow the trial judges of the original lawsuit to participate.

Case 3⁵: Appellant Zhang Hongxing and the Appellee Liupanshui Mingdu Real Estate Development Co., Ltd. (hereinafter referred to as Mingdu Co., Ltd.), Liupanshui Zhicheng Co., Ltd. (hereinafter referred to as Zhicheng Co., Ltd.) Joint Venture Real Estate Development Contract Dispute Case, Guizhou Provincial Higher People's Court in March 19, 2015 (2015) Qian Gaomin early word No. Civil judgement No. 8. Zhang Hongxing refused to accept the judgment and appealed to the court. After the court accepted the case, a collegial panel was formed in accordance with the law, and the case was heard in court. The Supreme People's Court pointed out that one of the members of the collegial panel of the first instance participated in the trial of judgement No. 20. According to Article 170, Paragraph 1, Item 4, of the Civil Procedure Law of the People's Republic of China, Issuing a ruling

⁴ PAN jian-feng, HAN jing-ru: On the nature and relationship of the third party's revocation action, Shandong Social Science.

⁵ Supreme People's Court: No. 114 of [2015]

to revoke the original judgment and remand the case to the original trial people's court, if the original judgment seriously violates statutory procedures, such as omitting a party or illegally entering a default judgment. The second paragraph of Article 325 of Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates that if any judge who shall be disqualified in accordance with law fails to be disqualified, it may be determined as a severe violation of legal procedures. Therefore, the decision rescinds the civil judgment No. 8 of the Guizhou Higher People's Court [2015], and returns it to the Guizhou Higher People's Court for retrial.

According to Article 3 of Provisions of the Supreme People's Court on Several Issues concerning the Implementation of the Withdrawal System of Judges in Litigation Activities (Judicial Interpretation (2011) No. 12), A judge who once participated in the trial of the present case under one trial procedure may not participate in the trial of the case under another procedure. The "case" mentioned in this provision should not be understood simply and mechanically from the scope of the parties and the object of the proceedings. Whether the substantive rights of the parties to bring a third-party revocation action can be supported or not depends on the judgment of whether there are errors in the legal documents that have already taken effect and whether the civil rights and interests of the third party are damaged. Therefore, although the original lawsuit and the third-party revocation action are not the same in terms of the scope of the parties and the object of the lawsuit, the third-party revocation action has the same nature and function as the second instance and retrial lawsuit procedure in evaluating whether there are errors in the relevant legal documents. Accordingly, the case arising from the suit of revocation by a third party belongs to the "case" mentioned in the foregoing provisions of the judicial interpretation, and the suit of revocation by a third party belongs to the "the trial of the case under another procedure" mentioned in the foregoing provisions of the judicial interpretation. So, collegial panel of the third-party revocation action does not allow the trial judges of the original lawsuit to participate.

As for the trial procedure of the third-party revocation action, there is no clear provision in the Civil Procedure Law of the People's Republic of China, and the Articles 257 and 294 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China only stipulates that summary procedure shall not be applied to the third-party revocation proceedings, and the court shall form a collegial panel to hear the case. However, there is no clear definition of whether the third-party revocation action should apply the first-instance procedure or the second-instance procedure, and judicial practice is still inconclusive. At present, there are two main viewpoints on this issue: "same saying" and "difference". Scholars who hold the "same opinion" view believe that the third-party revocation action is a new lawsuit, which is the first relief for a third person. Therefore, it should naturally apply the same procedure as the first-instance ordinary lawsuit, even if it is effective. The judgment, ruling and mediation book are no exceptions for the second instance.⁶ While the "difference theory" considers that the third party's cassation is not significantly different from the retrial for the original party. Even if the third-party revocation action means the first remedy for the third party, the third-party revocation action still belongs to the afterwards remedy procedure, so the procedure of the third-party revocation action should be different from the ordinary trial procedure of the first instance case.

On the basis of comprehensive analysis, the first instance procedure shall be applied to the trial of the third-party revocation action. The main reasons are as follows: First, the third-party revocation action is an independent new lawsuit. From the point of view of pre-procedural safeguards, any litigation should follow the procedure of first instance, second instance and then retrial, the second-instance and re-trial proceedings are based on the first-instance procedure. Once the trial jump occurs, it must be a lawsuit against the third-person lawsuit, and it also violates the procedural guarantee. in principle. Secondly, from the perspective of post-procedure protection, the third-party revoked litigation adopts the first-instance procedure, so that the litigants have the right to appeal after making the referee, and can provide the procedural guarantee for the parties who revoke the third-party litigation.

3. The Selection of the Third Person to Cancel the Suit and the Application for Retrial

For the third party outside the case, the third post personnel relief system includes the third party's revocation suit and the outsider's application for retrial system. How to distinguish between the two and apply is a common problem in practice.

The system of applying for retrial by an outsider refers to the remedy system of bringing a retrial to a people's

⁶ YAO Hui, WANG Han-bin: The Improvement of Withdrawal of the Third Person——Based on the Relationship of Withdrawal of the Third Person and the Former Lawsuit, Tianjin Legal Science.

court in order to relieve the civil rights of a third party who has suffered damage to the civil rights and interests of the original lawsuit and was unable to participate in the lawsuit due to reasons not attributable to the third party before.⁷ Regarding the application for retrial by the outsider, the Civil Procedure Law of the People's Republic of China of 2007 is stipulated in Article 204 (current Article 227 of the Civil Procedure Law of 2017): "Where, during enforcement, a person which is not a party to the case files a written objection regarding the subject matter of enforcement, the people's court shall examine the written objection within 15 days after receiving it and, if the objection is supported, issue a ruling to suspend enforcement against the subject matter; or if the objection is not supported, issue a ruling to dismiss the objection. If the person which is not a party to the case or a party disagrees on such a ruling and deems that the original judgment or ruling is erroneous, the trial supervision procedure shall apply; or if such disagreement is irrelevant to the original judgment or ruling, the person or the party may institute an action in a people's court within 15 days after the aforesaid ruling regarding objection is served." The outsider's application for retrial system is based on the outsider's execution of the objection, and the outsider first needs to file a written objection to the execution target. After the objection is dismissed, the outsider can apply for a retrial system. According to the provisions of this article, the application for retrial by the outsider can only be applied in the execution procedure, and the relief for the third party is extremely limited.

Article 5 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Trial Supervision Procedure of the Civil Procedure Law of the People's Republic of China in 2008 further stipulates the application for retrial by the outsider: "Where a non-party makes a claim for the subject matter of enforcement as determined in the original judgment, ruling or mediation paper but is unable to file a new suit to solve the dispute, the non-party may, within two years after the said judgment, ruling or mediation paper becomes effective or within three months after knowing or being supposed to know that his/her interests have been impaired, petition for retrial to the people's court at the next higher level than the people's court which rendered the original judgment, ruling or mediation paper." This article makes the outsiders apply for retrial and jumps out of the restrictions of the implementation procedures. It has a universally applicable meaning, and the application for retrial by the outsiders is formally established in China.

The third-party revocation action and the caseworker's application for retrial system as a post-procedure procedure to protect the legal civil rights of the third party outside the case have a large degree of similarity. For example, both require the original effective referee to have errors, and both have the power to judge the judgment. The impact, the change or cancellation of the two will affect the judgment of the original judgment and so on. However, there are still some differences between the two:

- The nature of the two is different. The third person's revocation is a new lawsuit, and the outsider's application for retrial is a retrial system, which is a special relief procedure.
- The applicable subject of the two is different. The third-party revocation action can only be applied to the third party who is affected by the original judgment and has not participated in the lawsuit because of the irresponsible and personal reasons. The outsider's application for retrial system can apply to all third parties who have a stake in the original judgment, regardless of whether they have participated in the lawsuit.
- The reasons for the lawsuits of the two parties are different. The reason for the lawsuit of the third party to revoke the lawsuit can only be that the original effective judgment, ruling or consent judgment is wrong, and the third party's civil rights and interests are damaged. The reason for the case of the outsider applying for retrial is relatively wide, including the fact that the effective referee's mistake in the determination of the facts also includes the original effective judgment in the application of the law and the trial procedure.
- The scope of application of the two is different, and the scope of application of the third-party revocation action is even narrower. According to Article 297 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, A people's court shall not accept a third-party revocation action which is filed under any of the following circumstances: (1) The action shall be handled under special procedures, prompting procedures, procedure for Announcement to Urge Declaration of Claims, bankruptcy procedures, or other non-contentious procedures. (2) The action is initiated against the contents involving identity relationship in the judgment, ruling or consent judgment which invalidates a marriage or revokes or dissolves a marital relationship, among others. (3) The action is initiated against the effective judgment in the litigation case of unregistered right holder v. representative as prescribed in Article 54 of the

⁷ XU Shao-bo: The Selection of the Third Person to Cancel the Suit and the Application for Retrial, Journal of Henan University (Social Science).

Civil Procedure Law. (4) The action is initiated against the effective judgment of any public interest action initiated by victims of any conduct that damages public interests as prescribed in Article 55 of the Civil Procedure Law. The outsider's application for retrial only stipulates that non-litigation cases may not be retrial, and there is no provision for other matters.

•The legal effects of the two are different. After the third party revokes the lawsuit and enters the proceedings, if the plaintiff provides the corresponding guarantee, the court may allow the execution of the original judgment, ruling, and mediation to be suspended, and the court's judgment will only change or revoke the interest of the third party. The content of the referee that does not involve the third party's rights in the original referee does not affect its legal effect. After the outsider enters the proceedings, the court shall decide to suspend the execution of the original judgment, the ruling, and the mediation, and the retrial will make the original. The referee will lose his effectiveness.

Article 301 of Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates the case concerning the revocation of the third party and the case filed by the outsider at the same time: "Where, during the trial of a third-party revocation action, the people's court makes a ruling on the retrial of an effective judgment, ruling or consent judgment, the people's court which accepts the third-party revocation action shall make a ruling on incorporating the third party's claims into the retrial procedures. However, where there is evidence proving that the parties in an original trial maliciously collude with each other, which has damaged the legitimate rights and interests of the third party, the people's court shall first try the third-party's revocation action, and make a ruling on suspension of the retrial action." But this does not completely solve the problem of the application of the third-party revocation action and the application of the retrial of the outsider. For example, which should be given priority, whether it is allowed to ask the second remedy again if a remedy is not feasible.

At present, there are two main views on the choice of the third-party revocation action and the application of the re-examination of the outsider in the academic world, namely, "choice of application" and "alternative application theory". "Choice of application" believes that under the premise of the existing law, third parties outside the case should have the right to choose between the two procedures in order to protect their legal rights, but not both of them can be used at the same time and filed a lawsuit for revocation.⁸ It is also not allowed to choose two procedures in succession. The third party outside the case can only choose one procedure as a remedy. The "alternative application theory" advocates that the third-party revocation actions should be used to replace the outsider's application for retrial. The legislative purpose of the third-party revocation action is to replace the outsider's retrial application system, otherwise the third party's revocation will be lost. The meaning of existence, and the scope of the subject of revocation of the third party is too narrow to solve the problem of the rights relief of the third party. The scope of application of the third party's revocation should be expanded, and the necessary joint litigants will be omitted. It is also included in the scope of the revocation of the lawsuit, and does not give the outsider the right to choose the parallel outsider to apply for retrial.

Case 4⁹: Retrial applicant Ningbo Construction Engineering Co., Ltd. (hereinafter referred to as Ningbo Construction Engineering Co., Ltd.) and the respondent Zhejiang Wuyi Yuanli Investment Co., Ltd. (hereinafter referred to as Yuanli Company), Zhejiang Sanxin Building Materials Co., Ltd. (hereinafter referred to as Sanxin Company), Zhejiang XX Yue Real Estate Co., Ltd. (hereinafter referred to as Huayue Company), Yang Boqun, Yang Liangliang's equity transfer dispute case, refused to accept the Zhejiang Higher People's Court (2008) Zhemin Erchuzi No. 1 civil mediation book, applied for retrial. After the trial, the court held that the focus of the retrial dispute was that the applicant Ningbo Construction Engineering Co., Ltd. requested the cancellation of the Zhejiang Provincial High Court (2008) Zhemin Erchuzi No. 1 Civil Mediation Book for compliance with the legal requirements for retrial, and pointed out that: Article 56 of the Civil Procedure Law amended in 2012 stipulates that the third party revokes the lawsuit. At the time of the promulgation of the Interpretation of the Trial Supervision Procedure, there is no provision for the lawsuit, and the outsider cannot claim his rights through the lawsuit. Even if it is possible, since the purpose of setting up the lawsuit is the same as that set forth in the retrial of the case, it is to protect the lawful rights and interests of the outsider from the violation of the effective judgment, ruling, and mediation. Therefore, in the case that the applicant has filed a retrial application, in order to save the litigation cost and better protect the rights of the parties, it is not appropriate for the applicant to file a third party's revocation, and it is more appropriate to resolve the dispute in this case. In summary, the

⁸ YUAN Chao, SUN Fu: Legal Application and procedure Construction of the Third Party's Revocation, Shandong Justice.

⁹ Supreme People's Court: No. 1175 of [2014].

applicant cannot or should not mention a new one. Litigation resolves disputes.

In view of saving judicial costs and avoiding abuse of litigation rights, when third-party entity rights are harmed by the effective judgment, they should only be allowed to choose a relief route. When the third party revokes the lawsuit and the outsider applies for retrial, it can be applied at the same time. First of all, although the third person's revocation and the outsider's application for retrial system will have a certain impact on the referee's *res judicata*, the third-party revocation action of the lawsuit will only affect the civil rights of the third party. The judgment of the outsider applying for retrial will have an impact on the entire content of the original judgment. Therefore, the impact of the application for retrial by the outsider is obviously greater, and the subversiveness of the referee is stronger. Secondly, from the perspective of equity relief, if the third party outside the case does not participate in the original proceedings, it is obviously inferior to the parties in the original proceedings in terms of the understanding of the case and the familiarity of the proceedings, and the retrial procedure is often based on the first-instance or second-instance procedure. If a third party outside the case enters the retrial procedure, then it is a kind of litigation raid on the trial level, which is extremely unfair to the third party outside the case. Compared with the case of the outsider applying for retrial, the third-party revocation action is a new lawsuit. There is no jump in the trial. Naturally, this problem will not exist. Finally, from the perspective of post-operational procedural safeguards, since the third-party revocation action is a new lawsuit, the parties to the lawsuit naturally have the right to appeal and retrial, which is not only the protection of the civil rights of the third party outside the case, but also provided a remedy for the parties to the trial, to avoid damage to their civil rights by third parties in the form of false or malicious proceedings.

4. Conclusion

The establishment of China's third-party revocation action system is of course affected by more and more malicious lawsuits such as false lawsuits in recent years, but it is more important than the purpose of curbing false lawsuits and protecting the legitimate rights and interests of third parties. It embodies the perfection of procedural guarantees, especially the third-party procedural guarantee. Of course, as a new system, the third-party revocation action is inevitable. There are still many imperfections. It is hoped that the legislature and the Supreme Court of China will issue corresponding improvement provisions as soon as possible, and correct the problems exposed by the third party's revocation system in judicial practice, so that the third-party revocation action system can truly realize its legislative purpose and legal value.

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