

Study on distribution of burden of proof in environmental Administrative Public Interest Litigation

Yijing Lu

Zhejiang Agriculture & Forestry University, Hangzhou, China

Abstract: Environmental administrative public interest litigation is different from ordinary administrative litigation, which is independent from civil litigation. It is not only about the overall standard of the use of government public power, but also about the effective realization of the public goals and interests of environmental protection society. Procuratorial organs at the grass-roots level in our country environmental administrative public interest litigation filed resource directly work a number of specific problems, not specifically stipulates clearly the allocation of burden of proof system, the administrative organs are obtain evidence of the favorable conditions, but the people's procuratorate and the absence of transfer evidence exists between administrative organ legal problems, cause the procuratorate in the case of consume large amounts of resources. Therefore, our country's environmental administrative public interests in civil litigation of burden of proof allocation rules of procedure of legislation needs to be perfected further, law of proof standard in our country related stipulation, the tort damage fact, causality, administrative subject behavior and its legitimacy, administrative organs have any illegal act or the wrong, Burden of proof, interests and other matters shall be standardized.

Keywords: Environmental administrative public interest litigation, the burden of proof, proof standard

1. Introduction

The revision of the Administrative Litigation Law in 2017 constrains and supervises administrative power by empowering the procuratorate to initiate administrative public interest litigation, thereby protecting public interests in areas such as the ecological environment. However, the development history of administrative public interest litigation is relatively short, and the relevant systems are not perfect. In particular, the distribution of the burden of proof involved, the relevant judicial interpretations are relatively simple, and they are not in line with judicial practice. In order to prevent the environmental administrative public interest litigation system from being virtualized, it is indeed necessary to clarify some misunderstandings in practice, so as to embed it into the existing administrative litigation system satisfactorily. Although environmental administrative public interest litigation has been included in the Administrative Litigation Law, it has not been distinguished and stipulated. The distribution of the burden of proof involved can only be based on the relevant provisions of the Administrative Litigation Law and several judicial regulations on the administrative public interest litigation system. explain. In mid-2019, the administrative organs responded to procuratorial suggestions with a rectification rate of 97.1%, and the vast majority of public welfare damage issues were resolved before litigation. As a judicial organ, the procuratorial organ should adhere to the principle of "doing nothing without the authorization of the law", although the current law gives the procuratorial organ the power to initiate environmental administrative public interest litigation. However, the system of distributing the burden of proof that lacks provisions should be stipulated by legislation, and the rights of procuratorial organs to investigate and produce evidence should be regulated by law.

Legal protection can ensure the high-quality operation of the environmental public interest litigation system. Through system adjustment and legislative provisions, coordinate the current conflicts between local administrative organs and procuratorial organs to maintain environmental public interests, coordinate with professional environmental protection departments and procuratorial organs to clarify evidence standards, and make up for the professional content needs of procuratorial organs lacking in professionalism.

2. Present situation of burden of proof distribution in environmental administrative public interest litigation in China

2.1 Current situation of burden of proof distribution in environmental administrative public interest litigation in China

The burden of proof, also known as the burden of proof, refers to the parties to their claims of facts to provide evidence to prove. At present, there are roughly four theories in China's academic circle. One is to strengthen the burden of proof of the litigant, that is, to strengthen the burden of proof of the procuratorial organ. Fu Guoyun think, for example, the procuratorial organ's legal professionals, proof ability is strong, so by the procuratorial organ to assume the burden of proof is more reasonable that the theory is based on procuratorial organ as a prosecutor, should limit the power of the administrative organ, avoid administrative organ concealing the fact that the procuratorial organ to assume the burden of proof is conducive to better restricting administrative power, It also prevents the prosecution from abusing its power. Second, who advocate who proof, but the "administrative inaction or not started in accordance with the law", the idea that the procuratorial organs and administrative organs have equal legal status, so according to the principle of "who advocate who proof" to allocate their own responsibility, but involves the administrative inaction, don't sulk, procuratorial organs shall bear the burden of proof. The above two viewpoints do not fully consider that the excessive burden of proof of procuratorial organs may not be conducive to the realization of the destination of environmental administrative public interest litigation, at the same time, reducing the burden of administrative organs is not conducive to the development of environmental administrative public interest litigation. The third is to carry out the inversion of burden of proof, that is, the state should apply the relatively general inversion of burden of proof distribution rules as far as possible in the practice of environmental administrative public interest litigation. The principle holds that administrative organs have the convenience and advantage of providing proof, so they should bear the burden of providing proof. Fourth, about the reasonable allocation of the burden of proof review in administrative litigation. For example, Wu Ruqiao and Gong Daomei believe that the procuratorial organs should only be responsible for the reasonable existence of the legitimacy of the objective facts of environmental pollution damage, and whether the procuratorial organs should strictly fulfill the relevant pre-lawsuit preparation procedures. Damage problem and the occurrence and the illegal administrative personnel sulk and behavior has obvious causal relationship between the litigation proof responsibility according to law, and other administrative organs should examine only illegality, the procedures of the other environmental administrative behavior itself is negative inaction, exceed the time limit for lawsuit and bear the burden of proof. Reasonable allocation of proof is conducive to the country to effectively save the existing judicial resources, reduce costs, improve efficiency, through the consideration of comprehensive factors, the burden of proof will be more reasonable distribution to the procuratorial organs and administrative organs.

2.2 Legislative status of burden of proof distribution in environmental administrative public interest litigation in China

"In 2017 the Supreme People's Court about the work environmental public interest litigation cases (try out)" article 41, condition of which conform to the requirements of the law court, in principle, should be first filing and registration of the relevant material, including using the qualifications, the indictment, preliminary confirmed that damage facts before litigation procedures of the performance of the material. In 2020 the Supreme People's Court, the Supreme People's Procuratorate about procuratorial pil cases to explain some issues of applicable law provisions of the procuratorial organs need to adopt after the filing of a lawsuit procuratorial departments advice as legal procedures before litigation, the procuratorial organ to collect relevant evidence, can the initiative to the higher administrative authority, citizen, organization collection. It does not impose a mandatory obligation on the agency, it just makes recommendations to the agency. At the same time, the provisions of Article 22 also include that when bringing a lawsuit against the procuratorial organ, the parties must provide the original indictment, the proof documents of the implementation of the procedure before the lawsuit and other factual materials of the case that the national environmental public property has been seriously infringed upon. In 2020, the statement of preliminary proof in the damage fact in 2017 was revised to more strictly require proof of the existence of the damage fact. The burden of proof stipulated above mainly lies in procedural and factual aspects. Procedural aspects include the proof materials of procuratorial suggestions and the proof of the performance of pre-litigation procedures. The proof of the performance of procuratorial suggestions is particularly important and determines whether the door

of litigation can be opened. The proof of damage in fact also includes the fact of damage to the environment and resources, and the proof of causality between the act of damage in fact and the consequences of the act of performance of duty.

3. Distribution of burden of proof in environmental administrative public interest litigation in China

3.1 The plaintiff's right of investigation and evidence collection is not guaranteed

Regarding the procuratorial organs' right of investigation and verification, there are still some disputes in academic circles about the application of the burden of proof in China's environmental and resource administrative public interest litigation. The focus of the dispute is whether the unified burden of proof can be applied to the plaintiff parties in the procuratorial organs' litigation and ordinary administrative litigation. The procuratorial organ has a strong ability to collect evidence, and the higher the degree of evidence that can be submitted to the procuratorial organ, the more timely and effective it can be in practice to promote the comprehensive administration of the administrative organ according to law. And both have failed in of the procedures, or decision issued by the various provinces and cities in 2020, referring to the procuratorial organs can adopt the method of investigation, but did not give the coercive power of procuratorial authority, the procuratorial organs as legal supervision main body, the lack of corresponding compulsory enforcement power, does not favor the procuratorial organs of evidence collection. The procuratorial organs in the process of case investigation and evidence collection and so on work, requires the coordination of personal consciousness, in the face of the evidence against their own rights, the first reaction may be deliberately hide, and investigation of procuratorial organs lack coercive power, it may actually increase survey time, pushed against the case. Secondly, the lack of coercive power will make the procuratorial organ face the risk of providing false evidence when collecting evidence. In the case of non-coercive power, the relevant evidence should be strictly checked. For example, the Gulang County Forestry Bureau provided photos and evidence of the restoration of forest vegetation, but ultimately the court found that it had not fully performed its statutory duties.

3.2 Unclear provisions on burden of proof

According to the provisions of the law, the procuratorial organ needs to provide evidence for the pre-litigation procedure, and at the same time, it should prove the fact of damage. In practice, the procuratorial organ spends a lot of energy on collecting evidence of the failure of the administrative organ to perform its duties, and the problem of weak capacity of burden of proof [1] may be hindered by public power. Under the premise that the procuratorial organ's right to investigate and collect evidence cannot be guaranteed, in order to achieve a higher standard of proof, the procuratorial organ will provide a large number of evidences to prove the illegal acts of the administrative organ and the fact of environmental damage, and also need to collect a large number of physical evidence and witness testimony. This is precisely caused by the unclear burden of proof, which makes the procuratorial organs bear excessive burden of proof, affects the efficiency of handling cases, increases the difficulty of proof, and also affects the enthusiasm of the procuratorial organs. Even more, it is easier and cheaper to prove the administrative omission, which will cause the procuratorial organs to choose more to prosecute the administrative omission, and this action violates the purpose of environmental administrative public interest litigation itself, allowing the occurrence of environmental damage.

There are generally two ways for administrative agencies to bear the burden of proof, one is to actively fulfill the burden of proof, the other is to passively fulfill the burden of proof. For the first case, the administrative organ adopts the way of positive proof, but still loses the lawsuit. The administrative organ thus has the wrong cognition and thinks that it will bear the risk of losing the lawsuit regardless of whether it actively sues, which leads to the negative prosecution and may lead to the resistance to the procuratorial organ, which is not conducive to the restoration of the environment. The important function of the court of environmental administrative public interest litigation mainly lies in that it can directly urge the environmental administrative organs to correct according to law actively and realize the rationalization of environmental decision-making through litigation and procuratorial organs. [2] If the defendant has negative antagonism towards the plaintiff, it will be detrimental to the realization of the purpose of environmental administrative public interest litigation. In addition, the administrative department of environmental administrative public interest litigation involves many parties, and in governance activities, it needs the cooperation of many parties to achieve, so the difficulty of providing

proof is further increased. Unclear responsibilities make all parties shirk their responsibilities and are unwilling to undertake the responsibility of environmental restoration and governance. Moreover, most of the executing departments are grass-roots departments, without relevant coercive power, unable to force other departments to cooperate. Therefore, it is difficult to correct mistakes in time, which will cause further environmental damage.

3.3 Unclear standard of proof

Standard of proof refers to the degree and standard of ascertaining facts or litigation relations in accordance with laws and regulations. [3] China's environmental administrative public interest litigation started late, there is no clear legal provisions on the standard of proof of environmental administrative public interest litigation, mainly based on the relevant provisions of the Administrative Procedure Law. According to the law, the standard of proof is set as "facts are clear and evidence is conclusive", which requires four conditions: evidence is true, evidence can support facts, evidence to evidence, and there is no contradiction between facts and evidence or contradiction has been eliminated. It can be seen that the requirements of the standard of proof are relatively strict. Although China's procuratorial organs litigation of the administrative investigation and evidence collection work ability also relatively society generally recognized public welfare organizations and volunteers personal ability, but our country brought the fundamental purpose of the procuratorial organs environmental administrative public welfare lawsuit is by promoting administrative act, administrative organs to correct environmental pollution protection of citizens' environmental and economic interests of the public, The use of state public power to restrict other public powers makes it more difficult for national procuratorial organs to start environmental administrative public interest litigation in China. Strict standards of proof make procuratorial organs bear too much burden of proof, so too high standards of proof is not conducive to mobilize the enthusiasm of procuratorial organs. In environmental administrative public interest litigation, the standard of proof is also unclear. There is an important link between the burden of proof and the standard of proof. The heavier the burden of proof is, the more materials are required to meet the standard of proof. The standard of proof is the process of the judge's free heart to prove, which belongs to the category of procedural law, while the burden of proof belongs to the category of substantive law, that is, the person of burden of proof should actively prove the facts he claims. The unclear standard of proof makes the procuratorial organ bear more burden of proof, which damps the enthusiasm of environmental administrative public interest litigation. In judicial practice, the application of the standard of proof is not uniform, and the administrative procedure law can not play a guiding role, so the supervision of administrative action is bound to be greatly discounted.

4. Improving the conception of distribution of burden of proof in environmental administrative public interest litigation in China

4.1 Clearly stipulate the content of administrative organ's omission and burden of proof

The law stipulates that the object of examination in environmental administrative public interest litigation includes the acts and omissions of administrative organs. Act refers to an administrative organ illegally exercising its powers, while omission refers to an administrative organ failing to perform its powers. Procuratorial organs should be since the problem of an administrative organ or the problem of illegal since the lawsuit, the administrative organ is authority, facts, laws, provide legitimacy proof procedure, and some of the administrative act even cause damage to the environment, but legal but not reasonable administrative behavior, in order to maintain the public interest, Administrative organs should be required to provide evidence for the legality and rationality of administrative acts. [4] In litigation, administrative organs bear the burden of proof to deny administrative omission, and the constituent elements of administrative omission have statutory obligation to act, possibility and necessity to perform. The distinction between the act and omission of administrative organs can shorten the time, improve efficiency and save costs of procuratorial organs. The pre-litigation procedure itself is to correct the performance of the administrative authority, improve judicial efficiency, solve the problem before the lawsuit, and so on, distinguish between act and omission can reduce the waste of resources in the investigation and evidence collection. For example, if an administrative organ is required to do nothing, the administrative organ only needs to prove that it has actively performed the administrative act. Where an administrative agency is required to act, the administrative agency shall not only prove that it has actively performed the administrative act, but also prove the causal

relationship between its performance of duty and the fact of injury. To simplify the burden of proof of omission is beneficial to enhance the procuratorial organ's grasp of winning the lawsuit and promote the procuratorial organ to exercise supervision more effectively.

4.2 Standard of proof and burden of proof are combined

The facts to be proved in environmental administrative public interest litigation mainly include damage facts, causality, legality of administrative acts, illegal facts or omission of administrative organs, etc. First of all, the burden of proof of the fact of damage is mainly borne by the plaintiff, and the procuratorial organ's proof of the illegal act of the administrative organ is its key to open the lawsuit. When the administrative organ has obvious illegal behavior, the procuratorial organ shall file a lawsuit according to the illegality of the administrative organ. When the environmental administrative behavior of the administrative organ has certain legality, the procuratorial organ shall examine its rationality. Therefore, the principle of proportion and the principle of reasonable administration are the basis for judgment. The existence of the injury can be proved by relevant photographic materials or relevant electronic evidence, and if the defendant does not refute the fact, the judge determines the existence of the fact; If the defendant refutes, the case is unclear, the plaintiff needs to continue to provide evidence, such as taking out the survey records, etc., the judge's inner confidence reaches 75%, if the judge cannot reach 75% of the inner confidence, the plaintiff is identified to bear adverse consequences. Secondly, for the proof of causality, the plaintiff only needs to prove that there is a certain connection between the injury fact and the administrative act, whether the injury fact belongs to the same space, whether the injury fact and the injury caused by the administrative organ belong to the same kind of injury, etc., so as to achieve 50% confidence in the judge's heart. The defendant would have to show no causation to overturn. The omission of an administrative act includes the following three aspects: first, whether the administrative act has legal obligations; second, whether the execution and response to the procuratorial suggestion are legal; whether it is refused to perform, delayed to perform or not to respond. The third is whether the public interests of the environment continue to be harmed because of administrative omission. Therefore, the defendant is looking for obligations, possibilities and evidence from the legal, factual and evidentiary aspects. The procuratorial organ needs to reverse the proof, reverse proof successful one, the case into the state of authenticity is unknown, the defendant continues to provide evidence, if the defendant reverse proof two or more, the judge's inner confidence reaches 75%, the administrative act is considered illegal. Finally, the plaintiff bears the burden of proof of the fact of illegal act or omission. If the administrative organ can prove that the illegal fact does not exist, it can overturn the evidence of the procuratorial organ.

4.3 Establish a mechanism to ensure procuratorial organs' right of investigation and verification

The exercise of the right to investigate and collect evidence involves the cooperation of the administrative staff and interested parties. If the administrative authorities do not actively cooperate, there will be a certain amount of resistance, which will affect the progress of the case. According to the Implementation Measures, procuratorial organs only have the right to read, copy and inquire, but not to restrict personal freedom. The implementation effect depends on whether the administrative organs cooperate. Therefore, the relevant system should be established as soon as possible to ensure that the national procuratorial organs really exercise the right of investigation, evidence collection and verification. The main content of the investigation and verification involves the investigation, verification, evaluation and other aspects of professional knowledge, so it needs to be identified by specialized agencies and industry associations. In view of the social characteristics of China's environmental administrative public interest litigation system, such as complexity, professionalism and high cost, it is necessary to improve the relevant assessment and audit appraisal system, establish a group of national environmental resource risk appraisal expert groups uniformly composed from all parts of the country, and give play to the supervision and guidance role of local expert organizations. [5] Secondly, the ability of procuratorial personnel to handle environmental administrative public interest litigation can be promoted by setting up relevant professional institutions, expanding personnel and strengthening the professional level of procuratorial personnel, so as to achieve the purpose of protecting the environment.

5. Conclusions

Accelerate and promote the legislation and judicial interpretation of environmental administrative

public interest litigation, but when the relevant judicial interpretation cannot be improved, other supporting measures can be adopted to improve and solve the distribution of burden of proof in environmental administrative public interest litigation, clarify the actions and omissibility of administrative organs, combine the provisions of the standard of proof and burden of proof, establish the protection mechanism of procuratorial organs' right of investigation and verification. Only in this way can we effectively solve the problems in providing proof, contribute to the operation and development of the burden of proof system in environmental administrative public interest litigation, and help build ecological civilization.

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