

The research on the Alication of Environmental Civil Public interest Litigation

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Abstract: *In recent years, environmental pollution and ecological destruction are becoming more and more serious, so there is an urgent need for relevant legal regulation. Environmental civil public interest litigation takes the overall interests of the ecological environment as the core, and comprehensively uses a variety of means to deal with environmental problems. Through the review of the relevant theories and pilot implementation of environmental civil public interest litigation, there are some difficulties, such as relatively narrow litigation scope, few litigation subjects, poor connection between pre-litigation procedure and litigation procedure, and so on. We should expand the scope of litigation, expand the subject of litigation and link up the pre-litigation procedure and litigation procedure in an orderly manner, in order to achieve good overall operation effect, comprehensively protect the ecological environment, and safeguard the environmental rights and interests of citizens.*

Keywords: *public interest litigation, right of action, procuratorial suggestion, pre-litigation procedure*

1. Overview of the basic Theory of Environmental Public interest Litigation

1.1 Theory of Private Prosecutor General

Citizen litigation is an important form of public interest litigation in the United States^[1]. The private attorney general is not a specific legal system in the statutory law of the United States. It comes from the legal trial characteristics of "following precedent" in the common law system. This theory was put forward in the Associated Industries of New York State v. Ickes case. The private attorney general theory specifically refers to: when a "dispute" in accordance with Article 3 of the U.S. Constitution arises, Congress can, in accordance with the constitutional authorization, protect the public interest against any natural or legal person other than government officials in the "dispute" For the purpose, file a lawsuit on the dispute.

In the 1960s and 1970s, the private prosecutor general theory became the main basis for "private relief" in statutory laws (such as the "Clean Air Law", etc.) to achieve the effect of "public relief"^[2]. It should be noted that the attorney general's theory originated in the United States, and its civil nature is still private remedy. Although all litigation is filed for the public interest, it is very different from the public interest litigation filed by the prosecutor's office as the plaintiff in my country. Due to the differences and interests of individuals, the private procurator-general system is easy to be improperly used by relevant subjects to seek private interests with the cloak of public welfare, which greatly affects the sound progress of the system.

1.2 Theory of environmental rights

The occurrence of the eight major public hazards makes people realize that it is urgent to protect the environment. In the 1960s, the Stockholm Conference on Human Environment formally opened the discussion on "environmental rights". In March 1970, the Tokyo Declaration clearly put forward the requirements of environmental rights. Nowadays, many countries have written the environmental right into the constitution as a basic right. For example, the Korean Constitution stipulates that citizens have the right to live in a healthy and pleasant environment, and the state and citizens have the obligation to cooperate in order to protect the environment. It is generally believed that the characteristics of environmental rights are as follows: the object belongs to the natural space and resources in the universal sense; it can meet the different environmental needs of citizens and society; it is stipulated by or reflected in the law; there are channels to seek relief for damage.

There is an important relationship between the theory of environmental rights and environmental public interest litigation: environmental rights are the basis of environmental legislation and law enforcement as well as public participation in environmental protection and environmental public interest litigation.^[3] In the mainstream, the theory of environmental right is the theory of public property^[4] and the theory of personality right^[5]. The theory of environmental right embodies that citizens enjoy various substantive and procedural rights such as the right to know, the right of supervision and the right to participate in environmental issues. The development of public interest litigation is conducive to the implementation of citizens' environmental rights in the theory of environmental rights, participate in public interest litigation through ecological environment award reporting and other behaviors, and practice citizens' environmental protection obligations.

1.3 The theory of environmental public trust

The formation of the theory of environmental public trust benefits from the article entitled "Public Trust Theory in Natural Resources Law: effective Judicial intervention" published by Professor Sacks, which creatively proposes to ally public trust to the field of natural resources management and strengthen the state's intervention in the damage of natural resources.

As far as the environmental beneficiary is concerned, some scholars^[6] believe that the environmental public trust is a special trust system, which is special in that its trustor and beneficiary are all citizens (that is, contemporary and future generations). Some scholars^[7] think that the trustee is all citizens excluding future generations, and the beneficiary is all citizens including future generations, because future generations can not be the subject of rights and obligations of the current law. No matter what the point of view, the theory of environmental public trust is of great benefit to the development of ecological economy and the construction of a good ecological environment in our country, and it is a realistic and rational choice.^[8]

Integrate the theory of environmental public trust into environmental civil public interest litigation, and give relevant social organizations or individuals the qualification and ability to file environmental civil public interest litigation as plaintiffs. Of course, China's environmental civil public interest litigation does not deny the qualification of social organizations or individuals to bring environmental civil public interest litigation, but in the actual situation, social organizations are willing but powerless, facing many difficulties. Moreover, individual citizens are often mixed with selfish desires, which leads to the lack of adequate protection of environmental public welfare. Therefore, through the establishment of a complete incentive mechanism, citizens or social organizations can be suorted to participate in environmental civil public interest litigation as "trustees" so as to protect environmental public welfare in an all-round way.

2. Current situation of policy and implementation

2.1 The policy status quo

The amendments to the Civil Procedure Law and the Administrative Procedure Law have added a public interest litigation system, stipulating that relevant agencies and social organizations can bring suits to the courts for acts that harm public interests. In 2015, the Standing Committee of the National People's Congress decided to launch pilot work of public interest litigation in 13 provinces and cities including Beijing and Inner Mongolia.

Since then, the "Interpretation of the Supreme People's Court on Several Issues Concerning the Alication of Law in the Trial of Environmental Civil Public Interest Litigation Cases", the "Public Interest Litigation Pilot Program by the Procuratorate", the "Implementation Measures for the Pilot Program of Public Interest Litigation by the People's Procuratorate", and the "Supreme People's Court of the Supreme People's Procuratorate" The Interpretation on Several Issues Concerning the Alication of Law in Procuratorial Public Interest Litigation Cases" and other related legal policies have laid a legal foundation for the advancement of environmental civil public interest litigation in general.

2.2 The Implementation status quo

According to relevant data, from 2015 to 2017, courts across the country accepted more than 1,000 public interest litigation cases brought by procuratorial organs and concluded about 900 cases. In addition, in the second half of 2017, courts across the country accepted about 250 public interest litigation cases brought by procuratorial organs, covering a variety of cases, such as ecological environment protection,

consumer rights and interests protection, state-owned property protection, state-owned land transfer, and so on.

In 2018, courts across the country accepted about 1,700 environmental public interest litigation cases brought by procuratorial organs, of which about 70 were environmental civil public interest litigation cases. In the first half of 2021, procuratorial organs across the country filed about 3,000 civil public interest lawsuits, accounting for about 95% of the total number of lawsuits filed, of which more than 2,000 civil public interest lawsuits were made, with a suort rate of 98%.

To sum up, the promulgation of the relevant system of civil environmental public interest litigation has made China's environmental public interest litigation system to a new level. At the same time, with the increase of public interest litigation cases, the problems existing in public interest litigation in our country are gradually exposed.

3. Review of the difficulties in the alication of environmental civil public interest litigation

3.1 The subject of litigation is relatively few

As far as the subject of environmental civil public interest litigation is concerned, it mainly includes the relevant organs and social organizations prescribed by law. Due to the limitation of the subject of litigation, there are also many shackles in the process of promoting environmental civil public interest litigation. This paper makes a concrete analysis of the difficulties related to social organizations:

Since 2015, among the subjects of environmental civil public interest litigation, a number of social organizations have emerged, such as China Biodiversity Conservation and Green Development Foundation, Beijing Chaoyang District Friends of Nature Environmental Research Institute, China Environmental Protection Federation and so on. The people's court also heard a number of major environmental public interest litigation cases, such as the "sky-high price" environmental public interest litigation case in Taizhou, Jiangsu Province, the Tengger Desert environmental pollution series public interest litigation case ^[9], and the Yunnan Green Peacock case. The Civil procedure Law has been amended to stipulate that relevant organizations may bring a suit in a people's court against acts that harm the public interests, such as polluting the environment and infringing upon the legitimate rights and interests of many consumers.

The new Environmental Protection Law makes further provisions on the relevant elements of environmental civil public interest litigation filed by social organizations. Due to the fuzziness of the legal provisions, many social organizations with environmental civil public interest litigation are unable to bring environmental litigation because of the lack of subject qualification. Vigorously protecting the subject qualification of public interest litigation of social organizations is determined by the extensive, serious and latent characteristics of environmental damage.

Ensuring the subject qualification of social organizations can not only save procuratorial resources, but also accelerate the efficiency of ecological environment relief, promote the early recovery of the ecological environment, and punish the relevant polluters as soon as possible.

3.2 The field of litigation is relatively narrow

The interpretation of the Supreme people's Procuratorate of the Supreme people's Court on several issues concerning the Alication of Law in prosecuting Public interest Litigation cases stipulates that in the course of performing its duties, the people's Procuratorate may initiate environmental civil public interest litigation when it finds acts such as damage to the ecological environment and protection of resources.

However, from the perspective of the environmental civil public interest litigation cases accepted by the court, the vast majority of the environmental civil public interest litigation cases brought by procuratorial organs and relevant social organizations involve the destruction of the ecological environment, such as air, water and soil pollution. There are few litigation cases involving forest, grassland, beach mineral, forest and other natural resources protection. According to the detailed analysis, compared with the air, water and soil pollution, the pollution in the field of natural resources often has the characteristics of long-term, which is often difficult to detect in the short term.

Due to the difficulties such as the limited strength of procuratorial organs, wide areas of environmental pollution and great disparity in profit-loss ratio, it is difficult for many types of

environmental pollution to get effective relief to the ecological environment by legal means of filing environmental civil public interest litigation. As a result, the field of environmental civil public interest litigation is relatively narrow.

3.3 The litigation procedure is relatively insufficient

Litigation procedure is the last line of defense to protect environmental public welfare. At this stage, environmental public interest is placed in the situation of judicial trial. Through the inquiry of the existing judicial precedents, the litigation procedure is faced with two major difficulties: high success rate and poor litigation effect.

As far as the high success rate is concerned, on the one hand, it is the "blessing" of the official data, and on the other hand, it is forced by the social background. Specifically, the litigation procedure is connected with the pre-litigation procedure. In the pre-litigation procedure, due to the different examination standards of the procuratorial proposal and the effect of ecological restoration, whether the litigation procedure is initiated or not also depends on the situation, such as the short period of recovery, the tedious specific measures in the procuratorial proposal and the definition standard of the effect of ecological restoration, and so on. Because of the difficulty or short period of ecological restoration, the proposed subject can not complete the ecological restoration within the existing time. For the above situation, there are some procuratorial organs still bring public interest litigation, and then win the case in the judicial trial. The occurrence of this result seriously affects the enthusiasm of the proposed subject for ecological restoration.

As far as the poor effect of litigation is concerned, it is not only related to the procuratorial recommendations of the pre-litigation procedure, but also related to the success rate. In the pre-litigation procedure, due to the different contents stipulated in the procuratorial recommendation, the effect of ecological restoration is also different. In addition, the high winning rate also leads to the reduction of the enthusiasm of the proposed subject. For the cases where ecological restoration is difficult, the court did not make an ecological restoration agreement with the defendant only on the basis of judicial decisions, and did not reach an ecological restoration agreement with the defendant through consultation and other procedures, stipulating the content, time limit and follow-up evaluation system of restoration, thus facing the phenomenon of poor litigation effect.

4. Ways to improve Environmental Civil Public interest Litigation

4.1 Expand the range of participants in public interest litigation

Under the premise that existing individual citizens cannot bring public interest litigation, in order to strengthen the talent team of public interest litigation and achieve the purpose of environmental relief through public interest litigation, we can enhance the professional level of participants in environmental public interest litigation by promoting the professional level of participants in environmental public interest litigation. Establish a database of experts in environmental public interest litigation cases or introduce technical assistance personnel to assist judges in hearing cases. Appropriately absorb lawyers, law teachers, law students and other talents in the legal field as plaintiffs' agents in environmental public interest litigation to participate in environmental civil public interest litigation.

Specifically: first of all, in the selection of relevant personnel, it is necessary to fully consider that environmental public interest litigation not only involves the relevant professional and technical knowledge of ecological environmental protection and pollution damage, but also requires some knowledge of civil and administrative law. Secondly, through the introduction of relevant experts and technical support personnel, promote judges to accurately judge the application of professional technology and law in the process of hearing cases, especially in the process of hearing major and difficult cases and discussing difficult professional issues; finally, by fully listening to the opinions of relevant professionals to ensure the unity of the effect of fact-finding and the application of the law.

4.2 Improve the coordination mechanism among multi-agents

On the one hand, the ecological and environmental administrative department exercises the function of environmental management on behalf of the country, and it has a good professional foundation, rich law enforcement tools, various law enforcement means and mature law enforcement technology, therefore, it has relatively rich experience and advanced advantages in the mastery of environmental

illegal information and the collection and analysis of relevant evidence. Procuratorial organs can actively establish relevant coordination mechanisms with relevant government departments to dock with relevant public welfare work.

On the other hand, procuratorial organs can establish a long-term communication mechanism with social environmental protection organizations, hold regular seminars, training and other activities, and strengthen publicity by issuing typical cases and other forms. At the same time, work with relevant administrative units to improve the professional level of social organizations in the analysis and handling of environmental problems.

4.3 Strengthen information exchange and clue docking

Social organizations hold a large number of social and folk clues, the filing of environmental public interest litigation is inseparable from the active participation of social organizations, while the procuratorial organs have the advantages of investigation and evidence collection^[10], through the establishment of clue sharing and communication and cooperation mechanism, give full play to the advantages of procuratorial organs and social organizations in public interest litigation. Therefore, we can further clarify the procedures for social organizations to participate in environmental civil public interest litigation, and improve the relevant provisions of procuratorial organs to suort prosecution, including starting procedures, scope of alication, contents and methods of suort, examination and identification of evidence, legal consequences and so on.

Citizens, as the most direct feelings and participants of environmental change, can play an important role in providing clues, providing evidence and searching for evidence of environmental pollution and destruction. It is necessary to establish and improve the reward and punishment mechanism of citizens in environmental public interest litigation, publicize, encourage, suort and guide citizens to provide clues of environmental pollution on their own initiative, and expand the sources of clues of environmental public interest litigation.

References

- [1] LIU Yi. *The Evolution of American Private Prosecution Litigation and Its Enlightenment to China* [J]. *Administrative Law Review*. 2017, {4} (05): 63-76.
- [2] ZHANG Hui. *Analysis of the "Private Attorney General" Doctrine in Citizen Suits in the U.S* [J]. *Global Law Review*. 2014(01): 164-175
- [3] GUAN Li. *A Research on Environmental Civil Litigation of Public Interest* [D]. *Project Universities*. 2011
- [4] YANG Zhaoxia. *On the Nature of the Environmental Right* [J]. *China Legal Science*. 2020(02): 280-303
- [5] WU Weixing, *New Development of environmental right theory*, Peking University Press, 2018
- [6] WEN Jie. *Environment Trust System: Innovation of Environment Protection Mechanism* [J]. *Hebei Law Science*. 2013(03): 57-61
- [7] YANG Qian. *Legal Impediments and Breakthroughs of the Establishment of Environmental Public Trust in China* [J]. *Journal of Henan University of Engineering (Social Science Edition)*. 2020(02): 64-68
- [8] WANG Lingbo; ZHAN Qiuguo. *Analysis of the Public Trust Doctrine in the Perspective of Ecological Civilization* [J]. *Journal of Henan Judicial Police Vocational College*. 2016(01): 116-118+122
- [9] ZHU Xiaoqin. *An Analytical Study on the System of Eco-Environmental Restoration Liability* [J]. *Jilin University Journal Social Sciences Edition*. 2017(05): 171-181+208
- [10] Zhang Zhongmin. *Review and Reflection on Litigation for Environmental Public Interest in the Pilot Project Launched by Procuratorial Organs* [J]. *Journal of Gansu Political Science and Law Institute*. 2018(06): 28-42