

On the Plaintiff Subject in Water Resources Public Interest Litigation from the Perspective of "The System of River Leader"

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Keywords: The system of river leader, Public interest litigation of water environment, Subject qualification, Water ecological protection.

Abstract. The gradual establishment of the plaintiff's subject qualification of the administrative organ provides the realistic possibility for the river leader to be the plaintiff of the environmental public interest lawsuit. But it is far from enough to rely on administrative means alone. As the "general agent" of water resources benefit, the river leader has the support of the theory of citizen environmental right and the theory of public trust, etc. The river leader also have inherent advantages in legal application, evidence collection, expertise, funding, and expertise. Therefore, it is beneficial to solve river pollution by allowing the river leader to claim ecological treatment and compensation for ecological repair damage to the main body of pollution through judicial channels. The system of river leader can make the river leader captain realize the essential transformation from "form" to "real".

Introduction

The system of river leader is a new type of river management system. The meaning of this system is that the leader party and government leaders as the river leader and the other main leaders act as deputy river leaders, forming a five-level the system of river leader of provinces, cities, counties, townships and villages. It is a new major system for the unified management of water resources. The system of river leader has effectively overcome the drawbacks of the original "Multi-party governance" management system and realized the effective improvement of the water resources environment.

Theory Evidence

The Theory of Environmental Right: The Origin of Right

Environmental right is the most important fundamental right to protect ecological environment. According to Professor Zhong-mei Lv, the citizen's right to environment refers to the citizen's right to live and develop in a healthy, comfortable and beautiful environment[1]. As a new basic human right, the citizen's right to environmental is a bundle of rights which mainly includes four rights: the right to use environmental resources, the right to know the state of the environment, the right to participate in environmental affairs and the right to claim for environmental infringement. Professor Shou-qiu Cai believes that the citizen's right to the environment is the right of all units and individuals to enjoy a clean and healthy environment, as well as the obligation to protect the environment[2]. The author believes that the environmental right is a common right enjoyed by all mankind. The subject of environmental right is extensive and universal. The right of the environment is the basic rights to the citizen. The environmental pollution and environmental damage are the violation of the citizen's environmental right.

The Theory of Public Trust: The Transfer of Rights

"Public Trust Theory" means that citizens entrust public environmental resources such as rivers, seas, lakes, wetlands, air and other public environmental resources to the government to manage,

thus forming a trust relationship between the government and all citizens. As the trustee, the government should follow the will of all citizens and have a proper and reasonable management environment. The theory of public trust is based on the theory of environmental right. Citizens delegate to the government the right to protect the environment from encroachment and the power to enjoy a good living environment. When environmental pollution occurs, the government can investigate the environmental legal responsibility of polluters and ask them to restore the original environmental ecology. Its power derives from the right of citizens, and it is supposed to manage the river environment on behalf of the public. Therefore, when water resources are destroyed, the river leader acts as trustee of river based on public trust theory.

Realistic Predicament

Disadvantages of Water Resources Management Model

Article 12 of the Water Law of the people's Republic of China stipulates the management system of water resources in China that is the management system of combining watershed management with administrative regional management of water resources. Specifically, the department of water administration under the State Council only establishes watershed management agencies for the important rivers and lakes determined by the state, while it adopts the mode of management by the administrative organs for other rivers and lakes. This kind of administrative organ management mode assigns the management responsibility of rivers in its jurisdiction to water conservancy, industry and commerce, environmental protection, sanitation, urban management, fishery and many other departments. It seems to be a clear division of labor, which in essence has led to widespread criticism. It is the phenomenon of "Multi-party governance". From the point of view of litigation subject of environmental public interest litigation, should the subject qualification of water resources public interest litigation be given to all administrative organs of water resources management? Although according to the current law, administrative organs can institute environmental public interest litigation, it is not clear which organ is more appropriate to file a public interest lawsuit on water resources when the water pollution situation occurs. In order to avoid unnecessary conflicts, how to determine the main body of water resources public interest litigation? The author holds that, instead of discussing the subject of the right of action, it is better to unify the responsibility of water resources management in "one body". It can not only solve the malpractice of "Multi-party governance", but also solve the difficult problem of determining the multi-subject right of action. The emergence of the system of river leader perfectly solves these problems, and it is a good solution for the river governor to exercise the right of public interest litigation of water resources.

River Leaders' Duties and Regulations Unknown

In December 2016, General Office of the State Council of the People's Republic of China issued <The opinions on the overall implementation of the system of river leaders >.River leaders at all levels are responsible for the management and protection of rivers and lakes, including water resources protection, water shoreline management, water pollution prevention, water environment control, etc.But it is not clearly defined that river leaders have the right to bring environmental public interest litigation.The author believes that since the protection of the river environment is a responsibility of the river leaders, he can use both judicial or administrative means.River leaders often use administrative means, but administrative means only serve as sanctions and its focus is "now".What the judicial means value is the ecology restoration, its key lies in "future".When the administrative means appear insufficient, the judicial means is undoubtedly the most correct choice.So it is a reflection of river leaders' environmental responsibility to protect water resources by way of environmental public interest litigation.

Insufficiency of Procuratorial Organs

The decision of the standing Committee of the National people's Congress on authorizing the

Supreme people's Procuratorate to carry out pilot work in public interest litigation in some areas is that 13 provinces and autonomous regions, municipalities directly under the Central Government to launch the people's Procuratorate environmental public interest litigation pilot work for a period of two years on July 1, 2015. Subsequently, the Supreme people's Procuratorate adopted <the measures for the implementation of the pilot work of the people's Procuratorate in initiating Public interest Litigation>, which has detailed provisions on the specific procedures and systems. On July 1, 2017, the two-year pilot work officially concluded. The practical experience and theoretical basis of the people's Procuratorate in bringing environmental public interest litigation is improving day by day. On 27 June 2017, the standing Committee of the Twelfth National people's Congress adopted the decision on the revision of <the Civil procedure Law of the people's Republic of China> and <the Administrative procedure Law of the people's Republic of China>. The law stipulates that procuratorial organs have the right to file environmental public interest litigation. In addition to China, other countries have given procuratorial organs the power to initiate public interest litigation. For example, the <French Civil procedure Law> in 1806, the <Civil procedure Law> in Germany, the <Clean Water Law> in the United States and other laws have authorized the procuratorial organ to file the corresponding lawsuit. Environmental law focuses on prevention, but the procuratorial organ, as a legal supervisory organ stipulated by the Constitution, is more important in its post supervisory duties. Therefore, it is still insufficient for the procuratorial organ to institute environmental public interest litigation.

Lack of Environmental Organizations

Although the <Environmental Protection Law> has stipulated that environmental protection organizations have the subject qualification to file environmental public interest litigation, most environmental protection organizations are rejected because of the strict restrictions. At present, there are about 3000 private environmental organizations in China, but there are only close to 300 environmental organizations that meet the qualification of the plaintiff. In practice, there are only 14 environmental organizations that bring environmental public interest litigation. Therefore, the environmental protection organization has little effect on environmental protection.

Conclusion

To sum up, environmental public interest litigation by the river leaders is the key to the establishment of river ecosystem. At present, the main problem of water environment in our country is water pollution. But in the long run, water ecology is the key to water environment protection. Determining the basic theory of water ecology as the ultimate goal of water resources protection plays an important role in guiding the The system of river leader and can overcome the limitations of the system itself. Therefore, in practice, the concept of water ecology runs through the The system of river leader and water resources public interest litigation system, so as to avoid short-effect and inadequate system. To sum up, based on the theory of environmental rights and public trust, the plaintiff qualification of river water resources public interest litigation is granted, which can be realized as soon as possible.

Acknowledgement

This research was financially supported by Innovation Project of Guangxi Graduate Education (Project number: YCSW2018149) Foundation.

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