

The Status and Resolution Mechanism of Environmental Brief Introduction and Countermeasures of Environmental Public Interest Litigation

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ABSTRACT

In recent years, while China's economy is developing at a high speed, environmental problems are becoming more and more serious. Problems such as air pollution and water pollution are emerging one after another, causing serious social problems. Environmental governance is imminent. Therefore, China revised the new "Environmental Protection Law" in 2014, and established a public interest litigation system based on the civil litigation system of the United States and other Western countries. This is the bottom line guarantee for China's actions against Green China, but from the current perspective, it has not been long before the procuratorate filed a lawsuit in this type of case, and China's relevant legal provisions for such cases are still flawed, and the legal profession has not paid much attention to such litigation, and environmental issues also include the problem of uneven regional development. This article will discuss the issues of joint tort liability in environmental public interest litigation cases, the consequences of damage and the determination of environmental repair responsibility, with a view to better improving the mechanism of environmental public interest litigation.

Keywords: *Environmental Public Interest Litigation, Procuratorate, Resolution Mechanism*

1. INTRODUCTION

As early as 2018, the State Council issued the "Opinions of the Central Committee of the Communist Party of China on Reinforcing Ecological Environmental Protection and Fighting Pollution Prevention and Control". We need not only moral constraints but also laws to protect the ecological environment. In this process, the Prosecution organization plays an important role and bears the important responsibility of ensuring the implementation of the law. It not only has the responsibility of supervision, but also undertakes the responsibility of prosecution. The law will empower the Prosecution organizations to file lawsuits in order to improve the environmental public interest litigation system. By exerting the functions of the Prosecution organizations, the environmental public interest litigation will be effectively raised to improve people's living standards, thereby promoting the coordinated development of the economy and the environment. However, it cannot be ignored that the current status of public welfare organizations still needs attention. However, in practice, there are still many problems in the system construction of the public prosecution filed by the Prosecution organization. Therefore, it is necessary to conduct an in-depth analysis of this and put forward a targeted plan for environmental public interest litigation.

2. PROBLEMS IN PROSECUTING ENVIRONMENTAL CIVIL PUBLIC INTEREST LITIGATION

After the reform of Prosecution organization in 2017, the function of China's Prosecution organization mainly focused on safeguarding public interests, legal supervision, prosecution and national governance. The Prosecution organization environmental public interest litigation system embodies various functions of the Prosecution organization. However, in practice, the function of procuratorial environmental public interest litigation is unsatisfactory, mainly due to the following problems:

2.1. The plaintiff is too narrow

As the system continues to improve. In addition to Prosecution organizations, social welfare organizations of administrative organs that it may bring a civil public interest litigation to the court. Moreover, administrative agencies and public welfare organizations also have their own unique advantages, which are unmatched by procuratorial agencies. Administrative agencies can also file environmental civil public interest litigation, and the winning rate is relatively high. Managing social public affairs according to law and safeguarding the interests of the broad masses of people are important functions entrusted to administrative agencies by

law. The administrative agencies have rich professional knowledge, human resources, and case sources to investigate environmental pollution and harm to the Natural ecosystems. The advantages of civil public interest litigation are obvious. This advantage is irreplaceable by Prosecution organization. [4] However, there is a problem that the environmental litigation initiated by the administrative agency easily conflicts with the administrative power of the administrative agency and produces a serious game of interests. The administrative agency will therefore abandon some environmental interests and protect the administrative power. Administrative agencies can rely on administrative measures to control pollution and damage to the environment, and exercise administrative power by taking administrative penalties and administrative coercive measures. Therefore, it is difficult for administrative agencies to coordinate the relationship between the subjects of environmental civil public interest litigation and management rights.

Compared with Prosecution organization, social organizations also have unique advantages in environmental public interest litigation. The environmental public interest litigation filed by the Prosecution organization is still implemented through the supervision of public power over public power. Such supervision can be implemented in addition to litigation. [5] The Prosecution organization is a party of public power and is subject to many restrictions in exercising its supervisory power, but the autonomy of social organizations can be separated from public power. The public welfare cases concerned by Prosecution organizations are often typical cases related to policies and the interests of all people. In practice, there are quite a few cases involving the interests of some groups that are ignored. [6]

Citizens have no right to bring such cases. The reason is to prevent citizens from abusing their right of action, and to exclude citizens from becoming qualified for such lawsuits. However, when things go too far, they will have the opposite effect. To completely exclude citizens' right of action in such cases is not conducive to public supervision of environmental events. judicial resources have been saved to a certain extent, but overall the harm is greater than the benefit. The environment is inseparable from the survival interests of citizens. Environmental rights are a basic right for citizens. If the environment is polluted and destroyed, then the interests of citizens will be violated. Moreover, when environmental infringement occurs, citizens are most susceptible to changes in the environment, and it is easy to find the subject of environmental infringement. When environmental pollution or destruction occurs, citizens have the right to ask the court for help in a lawsuit. [7]

2.2. The prosecution's litigation status is unclear

Environmental public interest litigation procuratorial supervision needs to focus on solving three major issues: First, who will supervise who? The second is how to

supervise? Third, what is supervision? This has a lot to do with the positioning of Prosecution organizations.

Supervision subject of procuratorial supervision of environmental public interest litigation. The Prosecution organization is the main body of procuratorial supervision of environmental public interest litigation. However, the Prosecution organizations have little manpower to supervise litigation and many targets. Prosecution organizations should not only supervise civil, administrative and criminal litigation, but also public interest litigation; not only to supervise illegal judgments of courts, but also to supervise the prosecution of public interest litigation; especially when the procuratorate filed environmental public interest litigation, there may also be issues such as improper prosecution, evidence-gathering procedures, the game of interest between administration and justice, and how to conduct self-supervision at the same time is also a question that the public welfare of the procuratorate still has to resolve.[8]

Supervision methods of environmental public interest litigation procuratorial supervision. Environmental public interest litigation, as a new type of litigation system, does not have a specific procuratorial supervision method in legislation. In practice, it can draw on the current experience of procuratorial supervision in civil and administrative litigation in China, but it also needs to consider the particularity of procuratorial supervision in environmental litigation cases, and scientifically ensure supervision of violation notices, procuratorial suggestions, and correction of protests. The effectiveness of the method also requires clear and targeted system design in accordance with the law. The supervision content of environmental public interest litigation procuratorial supervision. First, monitor whether environmental public interest litigation meets the prosecution requirements. The premise of bringing environmental administrative public interest litigation should be the existence of legal disputes. However, in many environmental administrative public interest litigation cases that have occurred, the administrative subject does not deny the existence of administrative violations or administrative inactions, but because of objective obstacles, the violations cannot be corrected in time Act or perform statutory duties. Second, monitor whether environmental public interest litigation complies with legal procedures. Procedure is the watershed between rule of law and arbitrary rule. In environmental public interest litigation, it is necessary to prevent one-sided pursuit of quantitative indicators such as winning rate, closing rate and other violations of the litigation process. Finally, supervise the legal judgment of environmental public interest litigation. Whether it is an environmental public interest litigation filed by a Prosecution organization or an environmental organization, there are few precedents for the defendant to win the lawsuit. The phenomenon of "one-sided" environmental public interest litigation is against the spirit of the rule of law and judicial laws. [9]

2.3. The pre-litigation procedures for procuratorial environmental public interest litigation are incomplete

It is unreasonable to position the Prosecution organization as a "complementary public interest litigant". Although the Prosecution organizations play a complementary and auxiliary role in such cases, it is unreasonable to list the Prosecution organizations as the last priority. On the one hand, it usually takes a long time for the Prosecution organization to discover clues that the public interest has been infringed and to file a case, to the Prosecution organization to perform the pre-litigation procedure of the announcement, and then to bring legal proceedings to other qualified subjects. If the violation is serious, then the current pre-litigation procedures may unreasonably extend the time for relief of public interest and reduce the efficiency of protecting public interest. The pre-litigation procedures currently being piloted may become a stumbling block to the relief of the infringed public interest. On the other hand, Prosecution organizations are listed as the main body of the prosecution of public interest litigation, which increases the prosecution organ's litigation burden. Therefore, the Prosecution organizations are less motivated to file public interest litigation cases. The Prosecution organization will prosecute in the last order without distinguishing the nature and severity of the case, which is obviously not conducive to safeguarding the interests of citizens living environment. The role of the supervisory authority cannot be revealed.

3. SUGGESTIONS FOR IMPROVING THE ENVIRONMENTAL PUBLIC INTEREST LITIGATION SYSTEM

The functioning of environmental public interest litigation requires the cooperation of national administrative, judicial and supervisory organizations to be implemented. Of course, the joint supervision of citizens and social organizations is also indispensable. The function of environmental public interest litigation should be solved by expanding the scope of the main litigation, improving the pre-litigation procedures of environmental public interest litigation, and clarifying the litigation status of the procuratorate.

3.1. Broadening the scope of litigants

China's current laws stipulate that a plaintiff who can bring a lawsuit must "the organization must be no less than 5 years old, and there is no record of violations and crimes within 5 years" The United States' 1970 Clean Air Act stipulates that environmental citizen lawsuits are "anyone can sue any Person's lawsuit", although its subsequent law restricts the plaintiff's eligibility, the limitation is similar to the "actual damage" requirement of the plaintiff in other lawsuits. It can be seen that the US environmental citizen lawsuit has not Plaintiff qualifications are too restrictive. Therefore, it is

recommended to shorten the restrictions on the establishment time of social organizations and grant the local government the power to regulate the length of time; it is clear that the The law stipulates that the prosecution organization can become the plaintiff, but we need to give citizens the right to sue for such litigation, but strict restrictions on the right to sue such citizens are required.

Shorten the time limit for the establishment of social organizations, and set a five-year limit for social organizations that can file lawsuits. There is no rationality. Time should be sought according to the economic development level of each province and city to avoid having no similar organizations in the local area. Environmental public interest litigation requires that the prosecution subject must possess not only various technical skills involved in environmental damage incidents, but also legal expertise such as investigation and evidence collection and damage identification, as well as substantial financial and talent support. At the beginning of the establishment of an organization, if it had the financial resources and no experience, and gave it the qualification of the subject of the litigation, it may result in a waste of judicial resources. However, an organization, with its normal operation in all aspects, certain experience, certain funds, talents, and various professional skills, grants its litigation subject qualifications, which can promote environmental protection^[1] and thus truly realize the implementation of environmental public interest litigation.

It should be clearly pointed out that the People's Procuratorate is a bottom-line public interest litigant. Environmental public interest litigation should be fully considered, not only involving civil torts, but also adapting to complex situations such as administrative management, criminal accountability, and judicial supervision.

Give citizens the right to sue. Article 13 of China's Constitution stipulates: "The state protects citizens' private property rights in accordance with the law." Environmental rights are a basic right for citizens. If the environment is polluted and destroyed, citizens and citizens' interests will be directly violated. In today's society, people's awareness of rights protection continues to increase. If the citizen is not granted the qualification of plaintiff, when the environment is polluted and the citizens' own health is violated, they cannot obtain relief through judicial channels, which will bring serious social hidden dangers. Judging from the judicial practice abroad, granting citizens the right to litigation did not result in abuse of judicial rights. US citizens must be notified of potential defendants 60 days before filing public interest litigation. If the violator rectifies the violation by himself after receiving the notice, or if the environmental protection department or the state government immediately conducts environmental law enforcement, the citizen's lawsuit need not be filed. This stipulation can promote citizens to exercise their rights of environmental supervision and make them fully participate in environmental supervision, so as to better protect the environment. However, in order to prevent indiscriminate litigation, we still need to be cautious about citizens' independent environmental public interest litigation rights. Citizens can be allowed to sue, but they must be restricted.

3.2. Clear positioning of the procuratorate

In order for a system to be recognized by the public and play its due role, it needs to be incorporated into a higher-level legal system to form a more complete legal system. Therefore, in order for Prosecution organizations to exert their advantages in environmental public interest litigation and enhance their role in protecting the public interest of the environment, the existing legal system needs to be changed accordingly. There are mainly the following methods to clarify the prosecution's litigation status in such litigation:

First, carry out legislative interpretation. According to the laws and regulations of our country, state organs with the right to create laws can interpret the laws they have created to achieve the purpose of understanding and using the laws more accurately. In legislative practice, the legislature generally has three methods for making legislative interpretations, which will not be repeated here. The author believes that in the above methods, "state organs make interpretations in accordance with the Constitution and laws" are more suitable for clarifying the prosecution's litigation status. Through legislative interpretation, further clarify the specific way to protect the environment, establish the prosecution's litigation status, and thus enhance the status of the system in China's existing laws.

Second, make legal amendments. In recent years, China has gradually made improvements and amendments to the original Environmental Protection Law, Civil Procedure Law and Administrative Procedure Law. The procedural law confirms that the Prosecution organization is qualified as a plaintiff in public interest litigation, but it predates the Environmental Protection Law. Therefore, it is necessary to add provisions on establishing the prosecution status of the procuratorate in this law. Therefore, the Organic Law of the People's Procuratorate must be amended accordingly. By clarifying the connotation and extension of the procuratorial power, the Prosecution organization's guidelines for handling cases in the field of administrative litigation and civil litigation are refined. Increase the content related to the environmental public interest litigation system raised by the Prosecution organizations, such as the jurisdiction of the case, litigation procedures, evidence collection rules, certification standards, responsibility allocation, etc. Then, use judicial interpretations to supplement the meaning of such litigation, thereby expanding the organization of environmental public interest litigation.

Third, refine the supervision. It is necessary to refine the supervision procedures. Under the condition that the supervision procedures are not clear, in order to enable environmental public interest litigation cases to be promptly and effectively accepted by the procuratorate in litigation supervision, efforts should be made to build a set of pre-litigation, mid-litigation and post-litigation supervision mechanisms. Build an information platform for environmental public interest litigation inspection and supervision. Prosecution organizations must perform their public interest litigation functions well, not only to improve their ability to perform their duties, but also to borrow in depth and rely on the power of society. Building an information platform can make up for the deficiencies of the

procuratorate in professional knowledge, information data collection and analysis. Solve the problem that the Prosecution organizations are "untimely" and "incomplete" in the procuratorial supervision of environmental public interest litigation due to "difficult to know". Establish a collaborative mechanism for environmental public interest litigation procuratorial supervision. In order to effectively carry out the procuratorial supervision work and enhance the joint force of supervision, we must first build an internal collaborative mechanism, and when the procuratorate conducts environmental public interest litigation, in order to prevent the prosecutor's self-supervision bottleneck, its superior procuratorate should send staff to participate in The influence is large and complex. Because there are environmental charity organizations in the region that have not yet qualified to send members to participate, they are given a certain litigation status.

3.3. Improve pre-litigation procedures for environmental public interest litigation

First, the procuratorate should be given the right of subrogation. For cases that seriously endanger the public interest, the procuratorate has the right to directly initiate civil public interest litigation without performing the announcement procedure, effectively preventing the expansion of damage results. In other words, in cases where the public interest is seriously jeopardized, the Prosecution organization has the right to file a civil public interest litigation in the first order. Second, after performing the supervision or recommendation function, the Prosecution organization should not only passively wait for the written reply of the relevant organization or organ to the handling situation, but should also actively follow up the return visit and promptly correct the illegal behavior of the relevant organization or organ. [12] Thirdly, for administrative violations in the field of environmental protection, the administrative organs should first perform their law-enforcement duties. Regarding environmental issues, if the relevant administrative organs are slack and do not actively assume responsibility and damage the national and social public interests, the procuratorial organ will have the right to institute administrative proceedings against the relevant public welfare organs according to law. It is the mission of the procuratorial organization to hold accountable and give the society an account. When unqualified public welfare organizations or individuals, the People's Procuratorate shall support their prosecution and participate in litigation together with public welfare organizations or individuals.

4. CONCLUSION

In 2012, China's environmental public interest litigation was first exposed, and after 8 years of repeated practice and exploration, satisfactory results have been achieved. However, today's social environmental problems still occur frequently, and the forms of environmental problems are

becoming more and more diversified. Therefore, we should actively explore innovative mechanisms for comprehensive protection of environmental public welfare. Environmental public welfare litigation can play a preventive role in environmental public welfare destruction. Regarding the public prosecution system that the Prosecution organization filed, it puts forward corresponding optimization suggestions to fully promote the promotion and application of its system. With regard to the positioning of such litigation by social organizations, individual citizens, and Prosecution organizations, the effect of the implementation is now obvious. Due to appropriate adjustments, the civil and individual organizations' rights of litigation are restricted and the positioning of the Prosecution organization should be clear. According to the law, the prosecutorial organs at higher levels shall supervise the supervisory status of the organs at the corresponding level and the courts in litigation. Individual citizens and institutions that do not meet the qualifications shall be supported and prosecuted. Thus, while preventing over-suing, we will resolutely win the battle of environmental protection.

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