

Studies on the Qualification of the Plaintiff Subject in Chinese Environmental Civil Public Welfare Lawsuits -From the Perspective of Experience in Environmental Public Welfare Lawsuit Pilots

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ABSTRACT

This paper starts from the current legislation and judiciary status of subject qualification in environmental civil public welfare lawsuits from the perspective of environmental public welfare lawsuit pilots, and then discusses the existing problems in Chinese environmental public welfare lawsuits, and puts forward five solutions as follows: In terms of the legislation, the solution is to define the subject qualification of citizens in lawsuit, liberate the conditions of lawsuit for environmental protection NGO, refine the relevant systems about the public welfare lawsuits in procuratorial organs, define the position of administrative organs in lawsuits, and the joint regulation of lawsuit sequence in a diversified mode.

Keywords: *environmental public welfare lawsuits, subject qualification, social organization and procuratorial organs*

1. INTRODUCTION

The study is aimed to build a four-in-one (citizens, social organizations, procuratorates, and administrative organs) diversified subject framework based on actual conditions of environmental public welfare lawsuits in Jilin Province and the foreign experiences, confirm the qualified standard and lawsuit sequence of various subjects, and then boost the construction of ecological civilization in our province, and implement sustainable development strategies. Foreign studies on environmental public welfare lawsuit systems were started early and were more mature. The studies are mostly focused on the scope of plaintiff and the theoretical basis related to environmental civil public welfare lawsuits, while few studies can be found, in terms of the sequence of claim right for the plaintiff in environmental civil public welfare lawsuits. In respect of studies on the environmental civil public welfare lawsuit system, Chinese scholars started late and are still exploring along the way, with huge deficiencies, and big divergences, especially in the scope of qualification for the plaintiff, the definition of qualified standard, and the confirmation of the sequence of claim right, etc.

2. ANALYSIS ON THE CURRENT STATUS OF SUBJECT QUALIFICATION IN ENVIRONMENTAL CIVIL PUBLIC WELFARE LAWSUITS

2.1. Current Legislation Status

The standard content for the plaintiff of environmental civil public welfare lawsuits was not officially legislated and included in the national legal system, but such content has been regulated in local regulatory documents accordingly. For instance, Henan Province has analyzed and specified the subject that can file environmental civil public welfare lawsuit in local regulations. Such local normative documents have provided wider scope of lawsuit subject, and also a diversified atmosphere. Some legislated documents are firstly implemented in local, followed by the summary of successful experience, and the national legislation. Among all the existing laws in China, regulations about such contents were firstly mentioned in the Civil Procedure Laws revised in 2013. Article 55 has specified that some legal institutions and organizations can file a public welfare lawsuit according to laws, in case of environmental pollution. In the new Environmental Protection Law released in 2015, there are specific regulations about the organizations raising public interest litigation. In the new Civil Procedure Laws released in 2017, the original regulations are revised, and except for the lawsuit subject mentioned earlier, procuratorial organs are also included as lawsuit subjects. Meanwhile, in the

Marine Environmental Protection Law and the Water Pollution Prevention and Control Law released afterwards, the supervision and management departments of marine environment and water pollution are also included as lawsuit subjects.

From the perspective of juridical interpretation, in Article 4 and 5 of the Interpretation of Several Questions about Applicable Laws for Handling Environmental Civil Public Welfare Lawsuit Cases, conditions for social organizations that are entitled to initiate environmental public welfare lawsuits as per regulations specified the Environmental Protection Law are further interpreted, and the position of lawsuit subject in procuratorial organs has also be defined in Article 11. Since then, our country has carried out pilots in many provinces and cities, realized the environmental public welfare lawsuits in procuratorial organs, further defined the position of lawsuit subject in procuratorial organs, and make the execution of the right legal as per juridical interpretations This juridical interpretation can also be applied in the environmental pollution cases incurred by mineral resources in 2017, and further regulate the subject initiating the environmental civil public welfare lawsuits.

2.2. Current Judiciary Status

The Supreme Court was authorized by the National People's Congress in 2015 to carry out pilots for procuratorial organs to initiate environmental public welfare lawsuits in 13 provinces and cities nationwide. In the current judicial practices, the subject of environmental civil public welfare lawsuit cases still refers to procuratorial organs and social organizations. Few environmental public welfare lawsuits are initiated by citizens or administrative organs. Procuratorates often handle environmental public welfare lawsuit cases as the plaintiff, while a constant increase has also been seen in the quantity of cases for which the subject of environmental public welfare lawsuits is social organizations. The 8th Prosecutors Office of the Supreme People's Procuratorate was officially established in January 2019. Since then, public welfare lawsuit procuratorial institutions have been set in 25 provincial and municipal procuratorates. Besides, a series of typical cases have also published accordingly. Summaries have been made, in terms of the experience in the judgment of environmental resource cases at all urban pilots. As of today, four batches of classic cases have been published, and some referential contents can be obtained in case collection and experience analysis, to facilitate further case trials. Meanwhile, legal regulations can also be formulated by accumulating experience and verifying constantly in practice.

3. DEFECTS IN THE QUALIFICATION SYSTEM OF THE PLAINTIFF SUBJECT IN CHINESE ENVIRONMENTAL CIVIL PUBLIC WELFARE LAWSUITS

3.1. The Subject Qualification of Citizens in Lawsuit Fails to be Clearly Legislated

As can be seen from the current legislation status of the plaintiff subject in environmental civil public welfare lawsuits as well as some judicial practice cases, there are successful lawsuit cases filed by citizens as the subject, but citizens are still not the qualified subject in such lawsuit cases from the perspective of legislation. Such judicial problems have also affected the specific implementation of citizens as lawsuit subjects, and although they may be the first to find environmental damages and initiate a lawsuit as the plaintiff, due to the lack of legal assurance and subject qualification, the lawsuit is doomed to be a failure [1].

As a major topic in social life, allergy covers a large population that are extremely sensitive to environmental pollution events, for such events are closely related to how they live and produce, so they are the qualified subjects in lawsuit cases. From the perspective of the environmental rights of citizens, it's one of their rights to initiate environmental public welfare lawsuits, and citizens shall be entitled to adopt such lawsuit mode and safeguard their environmental rights and interests without being influenced by legislation. Environmental public welfare lawsuits are aimed to realize public interests, but by safeguarding legal interests, citizens can also realize public interests indirectly to some extent, conforming to the objective of environmental public welfare lawsuits. Similarly, from the perspective of personal interests, citizens can participate in environmental public welfare lawsuit cases actively, and provide necessary support to develop environmental public welfare lawsuits.

3.2. Demanding Lawsuit Conditions for Environmental Protection NGO

Higher requirements are put forward in the existing legislations for environmental protection organizations as the lawsuit subject, with bigger restrictions in both the time and qualification, making it impossible for many environmental protection organizations to become the lawsuit subject. Meanwhile, some judicial organs fail to comprehend the regulations in juridical interpretations accurately, affecting the final result of judgment. Although quite a few social organizations have been registered in China, only a few hundred organizations can conform to the requirements for lawsuit subject qualifications, even if there are still necessary support in these environmental protection organizations conforming to the lawsuit subject qualifications. It's undeniable that, some large-scaled

organization members engaged in environmental protection are the main personnel of environmental pollution, so it's difficult for them to work on environmental civil public welfare lawsuits actively.

3.3. The Specific Systems for Procuratorial Organs to Initiate Environmental Civil Public Welfare Lawsuits Remain to be Perfected

The lawsuit subject of procuratorial organs has been defined in existing laws and judicial interpretations, and has also made procuratorial organs become the main practitioners of environmental public welfare lawsuits in judicial practices, but the specific systems remain to be perfected. There can be many problems in actual lawsuit cases, including lawsuit time limit, testifying difficulties and excessive lawsuit expenses. In previous environmental civil public welfare lawsuit cases, the defendant was generally private enterprises, but due to local economic protection, state-owned enterprises accused of severe environment pollution failed to be published substantially, violating the original intention of legislation.

3.4. Unclear Qualification of the Plaintiff Subject in Administrative Organs

Current regulations on the qualification of administrative organs and plaintiff subject only specify that the Marine Environmental Protection Law and the Water Pollution Prevention and Control Law are entitled to serve as the lawsuit subject, and no previous legislations have endowed administrative organs with the plaintiff position. Due to no clear content of administrative organs in legal regulations, few state organs initiate environmental public welfare lawsuits. These "organs specified in legal regulations" fail to give full play to their advantages as the plaintiff subject, and safeguard public environmental rights and interests practically as public authorities, but they are powerful in lawsuit capacity, and have advantages in investigating and collecting evidence, and are superior to other lawsuit subjects in these aspects.

3.5. Unclear Lawsuit Sequence

The qualification of the plaintiff subject in environmental public welfare lawsuits has showed a diversified trend, and a constant increase in the type of subject, but given the different positions of each plaintiff subject in the society, the relations are complicated between relevant plaintiff subjects that died earlier, so lawsuit cases can only be handled normally after such relations are clarified. There haven't been any clear legal regulations on the relations of qualification of the plaintiff subject, and only the sequence of legal regulatory organs, relevant organs and procuratorial organs has been confirmed initially, so in the follow-up case trials, each plaintiff subject may scramble

for the plaintiff subject due to interest relations, and even control the status with their social relations. Similarly, the persecution for the interests of public environment will be ignored, in case of no interest conflicts.

4. SUGGESTIONS FOR LEGISLATION

4.1. Define the position of citizens as lawsuit subject by legislation

As the major component of the society, and also the direct interested party of environmental pollution, citizens are extremely sensitive to environmental pollution problems, and pay high attention to the surrounding environmental pollution problems in production and life, playing a non-negligible role, so they shall be the qualified subject in environmental civil public welfare lawsuits. Citizens can serve as the lawsuit subject, so that some people can be more enthusiastic about lawsuits, and participate in protecting surrounding public environment via lawsuits as the plaintiff, so that these citizens can supervise whether the surrounding ecological environment is damaged by illegal personnel [2]. Environmental protection organizations can serve as the foundation in these public welfare lawsuit cases, without non-acceptance or other conditions. On the other hand, citizens can get more active in filing environmental public welfare lawsuits, and protect surrounding ecological environment in a better way. It's requested to define the subject qualification of the plaintiff, and refine relevant supporting systems, for instance, some bonus incentives can be provided after winning the lawsuit, and the lawsuit expenses shall be borne by the losing party, or some legal aid can be provided for citizens, so that citizens can serve as the lawsuit subject, without worrying about insufficiencies in professional capacity or the difficulty in investigating and collecting evidence.

4.2. Liberate the Conditions of Lawsuit for Environmental Protection NGO

The judicial interpretation of environmental public welfare lawsuits has specified the qualified standard for environmental protection organizations, and further expanded the scope of legislation, but only a few environmental protection organizations are included. As for the time limit, five years can be changed into three years, and the condition shall be regarded as qualified, as long as environmental protection activities have been engaged for three years, without illegal records. On the other hand, the qualification limit can also be changed into "registration at the civil administration department subordinated to municipal above people's government", to further support social organizations to initiate public welfare lawsuits. Environmental protection organizations can participate in environmental public welfare lawsuits

via different forms, with a stronger foundation in fund, and advantages in both personnel and technologies, so they should be encouraged to participate and support the plaintiff subjects in environmental public welfare lawsuits, to exert the effect as environmental protection organizations, compensate for insufficiencies of other subjects in qualification and resources, to further promote the system development of environmental public welfare lawsuit subjects [3].

4.3. Refine the Relevant System of Public Welfare Lawsuits for Procuratorial Organs

The supervision on the lawsuit initiated by procuratorial organs can be interpreted by legislation or some judicial interpretations, to avoid the excessive power of procuratorial organs, and the impact on developing normal systems, so that the behaviors of procuratorial organs can be restricted, while procuratorial organs can work in a fairer way in environmental public welfare lawsuits. Supervision exists in different forms, including the supervision of the state, the supervision inside procuratorial organs and the supervision of external public opinions, making it fairer and more transparent for procuratorial organs to initiate environmental public welfare lawsuits.

Meanwhile, it shall be noticed that, the time limit of public welfare lawsuits in procuratorial organs can be prolonged, to avoid excessive prepositional procedures and the expiration of lawsuit time limit, so that the loss of lawsuit rights can be avoided [4]. The defendant can bear the lawsuit expenses, but if procuratorial organs lose a lawsuit, the lawsuit expenses shall be borne by the national department of finance.

4.4. Define the Position of Administrative Organs in Lawsuits

Administrative organs can impose administrative penalties on enterprises polluting the environment, but such punishments are often made after the environment has been polluted, failing to exert a better preventive effect. The position of administrative organs in lawsuits shall be further defined, so that environmental pollution problems can be avoided from the perspective of prevention. Administrative organs have been recognized in many laws to be qualified as the plaintiff subject in environmental public welfare lawsuits, for instance, the Ministry of Land and Resources and the environmental protection organizations can serve as the plaintiff subject, in case of infringement, providing necessary preconditions for administrative organs to initiate environmental public welfare lawsuits [5]. After performing administrative obligations, administrative organs can initiate environmental civil public welfare lawsuits as the plaintiff, to avoid indiscriminate lawsuits based on restrictions specified in the precondition.

4.5. Define Diversified and Joint Governance on the Lawsuit Sequence

Administrative organs shall be the first to find ecological environmental problems, initiate a lawsuit to compensate for damages, and shall assume the liability to protect the ecological environment [6]. In case that administrative organ fails to perform such obligations, environmental protection organizations shall initiate environmental civil public welfare lawsuits, but in case that both the two subjects fail to file a lawsuit actively, the procuratorial organs shall serve as the lawsuit subject. All departments shall work in cooperation, further realize diversified information sharing, link all departments, and further form a new pattern for all departments to jointly regulate the ecological environment, and protect environmental resources in a better way.

5. CONCLUSION

Five suggestions are provided as follows for legislation based on discussions about the existing problems in Chinese environmental public welfare lawsuits: In terms of the legislation, the solution is to define the subject qualification of citizens in lawsuit, liberate the conditions of lawsuit for environmental protection NGO, refine the relevant systems about the public welfare lawsuits in procuratorial organs, define the position of administrative organs in lawsuits, and the joint regulation of lawsuit sequence in a diversified mode. There are still insufficiencies in the analysis on lawsuit sequence, which shall be the emphasis of scholars in further studies, to design different lawsuit sequences based on different categories of cases, and further perfect our subject qualification in environmental public welfare lawsuits.

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