

Research on Environmental Administrative Public Interest Litigation Instituted by Procuratorial Organs

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ABSTRACT

In the situation of increasingly serious environmental pollution, more and more local procuratorates in China have filed environmental administrative public interest lawsuits as plaintiffs. The author first explained the definition of environmental administrative public interest litigation, and then discussed the rationality and existing problems of the procuratorate as the plaintiff of environmental administrative public interest litigation in combination with the current situation, including the fact that the source of the case was too single; the judgment criteria for public interest were not clear; the standards of administrative organ violations are not uniform; the ability to handle cases is limited and the supervision of the procuratorate is insufficient. Finally, in view of the above problems, it is to propose countermeasures, such as expanding the source of cases, improve relevant legislation to unify relevant standards, and form professional teams, implementing supervision of the procuratorate by all parties in the society.

Keywords: *environmental administrative public interest litigation, plaintiff, procuratorate*

I. INTRODUCTION

With the continuous development of society, the problem of environmental pollution is becoming more and more serious. More and more local procuratorial organs in China have filed environmental administrative public interest litigation as plaintiffs. However, there are also some voices against the plaintiff status of the procuratorial organ in environmental administrative public interest litigation, and they think that only citizens and specific social organizations should be the plaintiff. The author will focus on the rationality of the plaintiff identity of the procuratorial organ, and put forward solutions to some problems.

II. PUBLIC INTEREST OF ENVIRONMENTAL ADMINISTRATION

A. Definition of public interest

The definition of public interest can be analyzed from "public" and "interest". "Public" limits the scope of interest subjects, while "interest" clarifies the standard of value judgment. Public interest can be realized through two forms: general supply and special supply. General supply refers to the general public

interest as a whole, replacing "the public" with "the majority". That is to say, as the subject of public interest, the majority of people should be anyone who can enter it at any time without any special conditions, without exclusiveness. Special supply refers to the interests enjoyed by some people, but this kind of interests is beneficial to the community as a whole, and is also a kind of public interest in essence. For example, subsidies are provided for the elderly in rural areas. The content of "interests" is uncertain and will change with time and region. It is the judgment standard stipulated by the Constitution Law, the economic, political and cultural judgment standard, etc. which are influenced by the objective facts of the society at that time.

To sum up, public interest is a kind of right and order between national interest and private interest, including social public interest and social public order¹.

B. The definition of environmental administrative public interest litigation

Public interest litigation refers to a special procedure system in which the specific subject sues according to the relevant laws and regulations and the

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¹ Pan Shenming. "Civil Public Interest Litigation from the Perspective of Comparative Law — Concurrently Discussing the Construction of China's Civil Public Interest Litigation System", 2009 East China University of Political Science and Law PhD Dissertation, p. 32.

court makes a judgment when the public interest is illegally infringed or impaired.

Environmental public interest litigation is divided into two categories: administrative litigation and civil litigation. Environmental administrative public interest litigation refers to the system that when the illegal act or omission of the environmental administrative organ infringes or may infringe on the public environmental rights and interests, the court allows the party with no direct interest to file an administrative lawsuit for the purpose of safeguarding the public environmental rights and interests, and requires the administrative organ to perform its statutory duty or correct or stop its infringement.²

C. The necessity of environmental administrative litigation instituted by procuratorate

At present, environmental protection organizations are often reluctant to file administrative public interest litigation because of the high litigation costs or considering the power gap between them and the administrative organs, most of which are civil public interest litigation. Environmental organizations are still like this, let alone the weak masses. Moreover, in the environmental administrative public interest litigation, there are often many identification problems, and the strength of experts and the cost of identification are issues to be considered. If the procuratorate institutes the environmental administrative public interest litigation, the court will generally file the case. If the people or environmental protection organizations institute the environmental public interest litigation against the administrative organ, the court may not file the case. In practice, there are also some problems, such as a few administrative organs neglecting to perform their duties, attaching more importance to examination and approval than supervision, abusing their discretion, lacking strong administrative enforcement measures or cross-functional supervision, and disconnection between administrative law enforcement and criminal justice. If the national interests or social public interests are infringed, the public power against the public power can protect the damaged interests more effectively.

III. THE CURRENT SITUATION OF ENVIRONMENTAL ADMINISTRATIVE PUBLIC INTEREST LITIGATION IN CHINA

In 2019, there were 108767 administrative public interest lawsuits in China. If the pre-litigation prosecution recommendations can't be effectively implemented, it is necessary to promote the solution of

the problems through the relay of litigation and trial. The procuratorate comprehensively uses pre-litigation procedures and litigation means to vigorously promote the protection of environmental public interests. It is very feasible for the procuratorial organ of China to institute public interest litigation of administrative environment

A. The procuratorate has legal basis of being the plaintiff

According to the relevant laws of China, Article 129 of the current Constitution stipulates that "the people's procuratorates of the People's Republic of China are state organs for legal supervision." Article 10 of the Administrative Procedure Law stipulates that "the people's procuratorate has the right to exercise legal supervision over administrative proceedings." The procuratorial organ has the function of supervision, which is responsible for supervising the implementation of the law, and is also the representative of national interests and public interests. The procurators have the professional quality and experience of investigating and handling cases, and the local procuratorates can supervise the environmental pollution cases within their jurisdiction, represent the public environmental interests, sue the administrative organs, realize the supervision of the administrative organs, and have the advantages that the environmental protection organizations do not have.

B. Providing summary of experience for pilot projects in the early stage

According to the data of Supreme People's Procuratorate, the rectification rate of administrative organs through pre-litigation procedures reached 97%. From the beginning of the pilot program, in administrative public interest litigation cases, the vast majority of them are pre-litigation procedures such as procuratorial suggestions to urge local rectification. Finally, they did not have a lawsuit with the administrative organ. The government is very afraid of being the defendant, especially the implementation of the system of the chief executive being in court. The administrative organ will actively carry out the rectification after receiving the procuratorial advice from the procuratorate. This can save social resources to the greatest extent. Moreover, the pre-litigation procedure can also ease the contradiction between the procuratorate and the administrative organ, which does not need to fight against each other and is also conducive to the harmony between the state organs. Before the establishment of the procuratorate as the plaintiff of administrative environment public interest litigation, there is often no news after the procuratorial proposal is issued. However, after it was established as the plaintiff, the administrative organ was afraid of being the defendant. With the implementation of the

² Xia Yunjiao, Wang Guofei. "Enlightenment to China from Legislation Related to Public Interest Litigation in Environmental Administration in Foreign Countries: Taking the United States and Japan as Examples", *Social Sciences in Hubei*, No. 9, 2007, p.134.

system of the chief executive appearing in court, the effectiveness of the procuratorial advice was greatly enhanced.

At present, environmental protection organizations are often reluctant to file administrative public interest litigation because of the high litigation costs, or considering the disparity of their strengths with those of administrative agencies. Most of these are civil public interest litigation. This is true of environmental groups, not to mention the weak masses. In administrative environmental public interest litigation, there are often many problems related to identification, and expert power and firm cost are all issues to be considered.

IV. THE PROBLEM OF THE PROCURATORATE BEING THE PLAINTIFF OF ENVIRONMENTAL ADMINISTRATIVE PUBLIC INTEREST LITIGATION

A. Single case source

Various regulations issued by the Standing Committee of the National People's Congress limit the source of clues for environmental administrative public interest litigation cases to "being in the process of performing duties by the procuratorate". The duties of the People's Procuratorate stipulated by laws and regulations include performing criminal investigations on duty, deciding or approving arrests, reviewing and prosecuting, and prosecuting prosecutions. Defining the source of the case clue as "performing its duties" will lead to a single source of the case, which will lead to many "fish leaking from the net". It is not conducive to protecting the environment and safeguarding the public interest.

B. Unclear judgment standards for public interest

There may also be conflicting public interests. When constructing public buildings such as schools, there are many problems, such as excessive noise affecting the daily lives of surrounding residents and whether they can park on the roadside at night. In this case, the procuratorate must judge the size of the public interest, make a choice, and finally decide whether to sue the administrative organ. Therefore, the procuratorate has great discretion in the judgment and choice of public interest litigation. If there is no relevant law or system to restrict it, it is likely to lead to the situation of responding to the law without complaint or excessive prosecution.

C. Inconsistent standards for determining violations of administrative organs

According to item 4, Article 25 of the "Administrative Procedural Law of the People's Republic of China", there are usually two situations of violating the law in which administrative organs supervised by the procuratorial organ: "illegal exercise

of powers" and "failure to perform statutory duties". It is well understood that "illegal exercise of authority" means that the administrative organ violates the provisions of the Administrative Procedure Law of the People's Republic of China to carry out administrative acts, which mainly refers to the acts of active action. In judicial practice, "failure to perform legal duties" can be divided into two categories. First, the law clearly stipulates the administrative organ's act obligation, but the administrative organ "does not exercise its power according to law", including the situation that the administrative organ does not act or does not correctly perform its statutory duties, refuses to act or does not fully perform its act obligation, or does not continue to perform its duties according to law. Second, the law will have blank loopholes or vague provisions for the duties of administrative organs, or there is no clear provision in law that the administrative organs should undertake such duties. The procuratorial organ requires the administrative organs to take active actions to recover the losses of national interests and social public interests or to promote the completion of administrative tasks, but the administrative organs do not. In addition, the premise of public interest litigation instituted by procuratorial organs is through pre-litigation procedure. The administrative organ refuses to correct the illegal act or still fails to act after the procuratorate issues procuratorial suggestions. If the administrative organ has partially performed its duties after the pre-litigation procedure, and has not fully performed its duties, the procuratorial organ will judge whether it needs to start judicial procedures to supervise the illegal acts of the administrative organ according to the standards such as the degree of diligence, the time limit of performance, whether it exhausts all means of law enforcement and whether the public welfare damage continues.

D. Limited prosecution capacity

The civil administrative procuratorial section of the procuratorate is specifically responsible for public interest litigation of the procuratorial organ. However, in the past, the public prosecution department has undertaken most of the work of the procuratorate, but the civil administrative prosecution department will still have insufficient personnel or professional level needs to be improved. In particular, environmental administrative public interest litigation requires personnel of public prosecution department to have professional environmental protection knowledge. The staff of the civil administration prosecution section has little knowledge in this area. Professional ability is the top priority in handling cases. If this problem can't be properly solved, it will not be able to institute a lawsuit smoothly. For example, the sewage discharged by factories causes river pollution. How to find the enterprises discharging sewage, and what kind of substances discharged cause river pollution and so on, need to go through rigorous and meticulous

investigation, and there is no certain level of professional technology that is not competent at all. This requires procuratorial organs to pay attention to details and prosecute accurately. This is also a difficult problem faced by the procuratorial organs at present. Moreover, the objects of supervision of the people's procuratorate are also very complex and huge. In addition, the source of the cases mentioned above is single. Relying on the staff of the relevant departments of the procuratorial organ to find the cases on their own initiative, it is difficult to fully cover them. Finally, it becomes the selective prosecution of the procuratorate, which is not conducive to the justice of the court.

E. Insufficient supervision for the Procuratorate

The power of supervision of the procuratorate is so great that there is no specific law and system for the judgment and choice of public interest, and the power without restriction can easily lead to other problems. Therefore, selecting the institutes that supervise the prosecution of environmental administrative public interest litigation is an inevitable problem, which is also an inevitable requirement for the protection of environmental public interest. If the procuratorate prosecutes or does not prosecute similar cases, it is easy to arouse the public's suspicion of judicial justice.

V. SOLUTIONS TO THE PROBLEM OF PROCURATORATE BEING PLAINTIFF IN ENVIRONMENTAL ADMINISTRATIVE PUBLIC INTEREST LITIGATION

A. Expanding the source of cases and establishing its own information network

The way to solve the single source of cases is to expand the source of cases and actively mobilize social forces. Environmental protection companies and environmental protection associations all have a lot of information. If they can become the source of case information, there will be no "dilemma" today. But it needs a channel to connect environmental protection companies, environmental protection associations and procuratorates. Nowadays, many environmental protection companies have joined the environmental protection association, which can let the environmental protection association provide relevant clues to the procuratorate on a regular basis. The environmental protection companies provide their own clues to their associations, and then the association reports them to the procuratorate. In addition, when the news media are looking for news materials, they will also come into contact with much information in this area. If they provide this information to the procuratorate, it is possible to increase many sources of cases. Increasing these professional strength will also reduce the difficulty that procuratorate looks for case clue.

Moreover, it can follow the practice of the mayor hotline, and open the procuratorate environmental protection hotline. The enthusiastic citizens can provide clues to the procuratorate by telephone. The audience can explain the appeal through letters, reports, e-mail reports, micro-blog official accounts or WeChat public accounts. It can also imitate the popular short video app to "shoot at will". Procuratorial organs at all levels can add "snapshot" module on the public account, build a platform for the socialized collection of public interest litigation clues and intelligent forensics, and guide the masses to "shoot". If the masses find the damage to the public interest of the environment, they can take pictures and upload at any time, and the procuratorial organ can appoint special personnel to manage the WeChat public account and timely feedback the acceptance situation. For the clues reported by the masses that do not belong to the scope of public interest litigation, the informant shall be informed according to law, and meanwhile the clue diversion shall be informed at the same time.

B. Improving relevant legislation to unify standards

The Supreme People's Procuratorate and the Supreme People's Court have issued the "Interpretation on several issues concerning the application of law in procuratorial public interest litigation cases, the provisions are not detailed enough. If there is no law to limit this, there will probably be cases of abusing or not suing, which will easily stimulate social contradictions. Therefore, relevant standards and laws should be issued as soon as possible to facilitate practical operation. In the case of public interest conflict, how to judge the larger interest and the smaller interest? At present, there is no very specific provision for the public interest. The Supreme Procuratorate can consider issuing relevant case guidance, providing a clear standard for local courts at all levels and facilitating the handling of similar cases. At the same time, the standards for the procuratorate to determine the illegal administrative organs should also be stipulated by more detailed laws. Now, many courts have issued their own case operation rules, and there is no unified standard. It is also necessary to unify and refine the standards for determining administrative acts as the judgment and choice of public interests.

C. Setting up a professional team of environmental administrative public interest litigation

In view of the lack of environmental protection experts and the limitation of prosecution capacity of the procuratorate, it can learn from and promote the practice of the procuratorate of Zhejiang Province, and make full use of the folk intellectual resources. There is an innovative move for Zhejiang provincial procuratorate to solve this problem. They set up a joint laboratory, which is located in the procuratorial

technology department (judicial appraisal center) and the provincial environmental monitoring center of the provincial people's procuratorate. At present, it is an algorithmic society. The procuratorate establishes an expert committee. Experts with excellent knowledge will use their own experience and academic research results to give timely and effective help in the work of the procuratorate.

Other senior procuratorates in China can also set up an expert committee in the hospital, and absorb professors from the academy of environmental sciences, environmental protection companies, and colleges and universities as members of the committee. They can make full use of the talents of colleges and research institutions and find experts in related fields, and these talents will become a powerful think tank for environmental administrative public interest litigation of procuratorial organs. In this way, it not only solves the problem of insufficient professional knowledge of procuratorial organs, but also gives play to the expertise of experts and scholars to apply what they have learned to the benefit of the society. The ensuing problem is the issue of salary distribution and establishment of the members of the expert committee. It can refer to the provisions of the people's court on people's assessors. The funds of the expert committee shall be distributed uniformly by the state finance. During the performance of their duties, the experts of the expert committee are paid by the original work unit. Experts of the expert committee shall be subsidized by the people's procuratorate for the expenses of transportation, dining and other expenses incurred by them for participating in psychological assistance activities. The expenses necessary for the expert committee to carry out the prosecution shall be included in the operational funds of the people's procuratorate and shall be guaranteed by the finance of the government at the same level. Guangzhou also put forward the idea of establishing the supervision and coordination command center of public interest litigation, which can realize the six unity of case clue management, supervision strategy research and judgment, case jurisdiction designation, case handling force deployment, case handling work command and case information release, and focus on the advantage to handle key cases of public interest litigation and protect the ecological environment. This is also an idea worth trying.

D. Supervision of procuratorates by all social parties

To build a beautiful China needs the rule by all people. Public participation in environmental governance is the general trend. The procuratorate must regularly announce the filing of environmental administrative public interest litigation. According to the actual situation, procuratorates stipulate to issue reports on a monthly or quarterly basis. In addition, the above mentioned intelligence agents who provide clues

to the case can also be supervisors. And it can be announced to the public through the developed communication network. For example, some people report the clues of the inaction of the administrative organ to the procuratorate. After the procuratorate receives the clues and verifies them, it does not bring the procuratorial suggestions to the administrative organ or sue the administrative organ. The situation of environmental pollution is still very serious, so the clue provider can disclose the fact to the news media or to the society through Weibo and other short video apps, and supervise the procuratorial organs through public opinion. The law also needs to make provisions for the consequences of the omission of the procuratorial organ, so as to better realize the supervision of the procuratorate. The procuratorate should also realize self-monitoring and report to the procuratorate on the filing and related progress of environmental administrative public interest litigation on a regular basis. The combination of external supervision and internal supervision can better guide the procuratorate to file environmental public interest litigation.

VI. CONCLUSION

It is necessary and feasible for the procuratorial organs to act as the plaintiff of environmental administrative public interest litigation, which also conforms to the definition of environmental administrative public interest litigation. Although there are still some problems in the practice of the procuratorial organ as the plaintiff, it will be able to better safeguard the public interest and protect the ecological environment by constantly summing up the experience, improving the professional level of the procuratorial organ, unifying the standards and strengthening the supervision.

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