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Formation and Breakthroughs Made in the Plaintiff Subject System of China's Environmental Civil Public Interest Litigation

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Abstract: As a result of the intervention of subjects of public rights, the subjects of China's environmental civil public interest litigation system have lost their equality, as evidenced by the "indirect" interest of suit relationship and the failure of the theory of interest of suit. According to the theories of abstract public right and objective litigation, the right of action is an objective and universal right, where the interests are not necessarily included in the content of the right of action. Hence, the right of action and the litigation right should be separate and independent of each other. Furthermore, the theory of appropriateness of parties in continuous improvement advocates the mode of action right in which substantive parties and formal parties coexist, thereby laying a theoretical foundation for the establishment of the plaintiff subject system of the environmental civil public interest litigation in China.

1. Introduction

To date, the plaintiff subject system of environmental civil public interest litigation has been preliminarily constructed in China and has been introduced into a number of rulings in judicial application. Nevertheless, an in-depth exploration reveals the defects of the system in judicial practice, including the definition of subject of the right of action and confirmation of the litigation subject sequence. In this regard, this paper traces the theoretical basis of the plaintiff subject system of environmental civil public interest litigation, elaborates the formation and evolution of the system from the legal principle, and analyzes the institutional basis of environmental civil public interest litigation, with a view to enhancing the scientificity, practicability and feasibility of the plaintiff subject system of environmental civil public interest litigation by exploring and improving relevant theoretical system.

2. Failure of the "Theory of Interest of Suit" in the Formation of Plaintiff Subject System

From the perspective of system design, environmental civil public interest litigation falls under the category of civil litigation. As its embodiment in the procedural law, both parties in the lawsuit

have equal status and enjoy the interest of suit. However, due to the intervention of the subjects of public rights, the subjects of China's environmental civil public interest litigation system have lost their equality, as evidenced by the "indirect" interest of suit relationship. As a result, the substantial owner of interest is completely separated from the litigant in the lawsuit, and any organization that meets the statutory conditions may be included in the environmental civil public interest litigation as the plaintiff. Also, from the perspective of the protection of judicial resources, the court cannot make a judgment that the losing party bears the risk of losing the lawsuit because there is no direct interest correlation involved, which easily leads to the abuse of the right of action and the waste of limited judicial resources. It should be noted that whether there is environmental "protection capacity" is not exactly equivalent to whether there is "interest of suit", as "protection capacity" is in the scope of operation, whereas "interest of suit" is in that of right protection. As suggested by the judicial practice of environmental public interest litigation, however, the greater the environmental protection capability, the more likely it is to have a set of environmental rights claimed in the litigation. This is obviously contrary to the relevant theory of right of action, which leads to significant differences between theory and practice precedents. This provides inspiration for the study and improvement of the theoretical structure of the system. Therefore, when analyzed by the traditional civil theory of interest of suit, environmental protection organizations shall only appeal their rights in environmental civil public interest litigation as "agents" rather than plaintiffs. Simply put, when the plaintiff subject of environmental civil public interest litigation is analyzed by the traditional civil theory of interest of suit, the theory of interest of suit will fail in the judgment of the entry standard of prosecution.

3. Resistance and Breakthrough of the "Theory of Interest of Suit" in the Formation of Plaintiff Subject System

In view of the failure of the plaintiff subject system of environmental civil public interest litigation in the theory of interest of suit, it has become an immediate priority to provide support for the subject theory system by exploring, absorbing and generating other related theories. Considering the major breakthrough made in the theory of litigation right in the construction of the plaintiff subject system of environmental civil public interest litigation, by discussing and expanding its core content, the theory is expected to become the theoretical support of the plaintiff subject system of environmental civil public interest litigation.

3.1 Resistance of the Theory of Right of Action in the Formation of Plaintiff Subject System

"The right of action requires legitimate interests and legitimate parties." [1] In most cases, a legitimate party refers to a victim of an interest, and such an injury is usually directly related to the immediate interest. As the existing rights and interests are recognized as legitimate interests by law, in the right of action, legitimate interest owners as legitimate parties protect their own rights and interests based on legitimate interests. At this level, the right of action is subordinated to the legal relationship of impaired rights. If there is no legal relationship of impaired rights, there is no right of action. Environmental protection organizations are mostly specialized agencies set up for environmental protection undertakings, while environmental protection and procuratorial organs are law enforcement and legal supervision organs. Since they are not directly related to environmental public interests (i.e., there is no damage to legitimate rights and interests in form), their rationality as legitimate parties is excluded, implying the challenge of constructing the plaintiff system of environmental civil public interest litigation from the perspective of the theory of right of action.

3.2 Major Breakthroughs of the Theory of Right of Action in the Formation of Plaintiff Subject System

Some scholars ascribe the above theories of right of action to the "theory of right of action in private law", [2] which is also stipulated in Article 119 of the *Civil Procedure Law* of China. As its opposite, the "theory of abstract public right" emerges and argues that "the right of action is independent of the substantive right of claim rather than contained within it, and exists prior to the action." [3] Accordingly, the right of action is independent of the substantive right of claim and exists before the action. In other words, as two different rights, the right of action and the substantive right of claim do not necessarily contain each other. Therefore, the "theory of abstract public right" emphasizes that the right of action is an independent right of public law, which is applied to the objects of public interest protection in public law to realize the protection of their interests by means of litigation.

Moreover, some scholars attribute the civil public interest litigation stipulated in Chinese law to the "theory of objective litigation", [4] which is in a way correlated to and coupled with the "theory of abstract public right". The definition of objective litigation admits that litigation is an inherent right that does not transfer by the existence of interests, while the definition of the "theory of abstract public right" also indicates that the right of action is a universal right that exists objectively. Interests are not necessarily included in the content of the right of action, hence the right of action and the litigation right (that is, the function of the right of action and the function of litigation) should be separated. Since the function of the right of action is positioned as "request for judgment in this case", that is, "claim for judgment in this case", the function of the right of action is obviously moved to the judgment stage rather than the prosecution stage. This elevates the similarity between the "right of claim for judgment in this case", which is derived from the theory of right of claim for right protection, and the "theory of abstract public right", thus achieving a breakthrough in the theory of right to claim.

4. Expansion of the "Theory of Qualification of Litigant" in the Formation of Plaintiff Subject System of Environmental Civil Public Interest Litigation

"Qualification of litigant means that a party has the right of litigation enforcement and is qualified to accept the verdict of the case". [5] In the quoted statement, the term right litigation enforcement refers to the power to bring a lawsuit in one's own name, [6] and "in the case of separation of formal parties and substantive parties, the right of litigation enforcement no longer follows the principle of civil rights and interests allocation in substantive law." [7] As for the separation of formal and substantive parties, it is first necessary to offer a general description of the concept of parties.

On the whole, the cognition of the concept of parties has undergone three stages of evolution, namely substantive parties, formal parties, as well as the coexistence of substantive parties and formal parties. [8] Substantive parties are subject of the substantive right relationship of the object of action. Proposed by a German scholar, Kohler, in 1881, formal parties mean that the status of litigant shall be judged or ascertained according to the claims of the litigant rather than objective rights. That is, formal parties are allowed to bring an action in their own name without considering whether they are related to the substantive rights of the object of action. Given the extensive adoption of the code in the field of bankruptcy and estate administration, the theoretical argument for the formal parties filing suits in their own names remains unhindered.

China is currently in the stage of co-existence of substantive parties and formal parties. Accordingly, there is a change in the filing process from filing examination of authority mode to filing registration of the protection of the right of action. This theory of right of action effectively

protects the right of action by emphasizing the removal of limitations and restrictions on litigation. Those who bring a lawsuit in their own name are recognized as formal parties, and they are entitled to act as formal parties as long as the filing conditions meet. On the other hand, the review of the parties' qualification to determine whether they are substantive parties or legitimate parties indicates that their statuses as legitimate parties or substantive parties do not constitute a condition for prosecution, i.e., the two are separated from, rather than bound by each other. Substantive parties tend to establish the identification mode of the transition of administrative power and law interests (that is, plaintiff parties do not claim themselves as the obligatory agent of the substantive legal relationship to be tried), which has been included as a major content in the plaintiff subject system of environmental civil public interest litigation.

To be specific, administrative power takes into account the circumstances of litigation take-on. Litigation take-on points to that some civil subjects lose the right to dispose of their civil rights and obligations, accompanied by the restriction or deprivation of litigation enforcement right, and the granting of litigation enforcement right to subjects (such as bankruptcy administrator) stipulated by law. The theory of administrative power is actually the cause of the "substantive law" of the theory of legitimate parties, and the right of litigation enforcement is the cause of the "procedural law" of the theory of legitimate parties. The representative litigation and public interest litigation are derived and developed according to the litigation take-on in the procedure law, and environmental civil public interest litigation is the result of litigation take-on theory. In the case of interest confirmation, the interest of law is mainly due to the action of confirmation, and whether it is related to interests is examined and confirmed by the court.

With the development and evolution of the aforesaid theories, it is the embodiment of the current theoretical achievements that environmental protection organizations are included in the plaintiff subject of environmental civil public interest litigation. Since not all the subjects of environmental damage exercise their right to sue, the civil rights and obligations that should be enjoyed by the interested subjects of environmental damage are transferred to the environmental protection organizations with professional environmental protection ability or the environmental protection agencies with environmental protection management responsibility. The right of litigation enforcement is as well vested in these institutions to exercise the litigation take-on in environmental civil public interest litigation.

5. Legalization of the Plaintiff Subject System in China's Environmental Civil Public Interest Litigation

Based on the above theoretical basis and judicial practice, the plaintiff subject system of environmental civil public interest litigation has been established. The massive academic research from 2005 to 2012 provides theoretical preparation for the system and promotes the improvement of the theoretical system of environmental public interest litigation. The judicial practice of the system is based on the decision of the State Council to strengthen environmental protection and the judgments of environmental public interest litigation cases made by local courts.

On the grounds of improvement of the theoretical system of environmental public interest litigation and accumulation of local judicial practical experience, Article 55 of the *Civil Procedure Law* was amended in 2012. While clarifying that the organs and organizations stipulated by law may file environmental civil public interest lawsuits, there are great differences in judicial application interpretation as to whether these organs are procuratorial organs, environmental protection organs or both. In Article 58 of the *Environmental Protection Law* modified in April 2014, the scope of social organization was clearly defined. In December of the same year, the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law*

in the Trial of Environmental Civil Public Interest Litigation Cases and the *Interpretation of the Supreme People's Court on the Application of Civil Procedure Law* were successively promulgated. The former improved the operability of the system, while articles 284 and 287 of the latter defined the organs prescribed by law. By referring to the *Environmental Protection Law* and the *Consumer Protection Law*, legally prescribed organs and social organizations were listed as co-plaintiffs to be involved in environmental civil public interest litigation. As of the amendment of Article 55 of the *Civil Procedure Law* in 2017, the provisions on the plaintiff subject system of environmental civil public interest litigation have been clearly proposed, marking the formation of the ternary subject structure of social organizations, procuratorial organs and administrative organs.

6. Conclusion

Despite the preliminary establishment of the plaintiff subject system of environmental civil public interest litigation in China, there is a late start in the discussion on the rationality of institutional construction. This covers a wide range of contents involving mainly four areas. The first is the dispute and succession of the plaintiff's right of action, the second is the pre-litigation procedure of procuratorial organs to bring a lawsuit, the third is the construction of the "co-plaintiff" system, and the last is the qualification of litigant in environmental civil public interest litigation. Since there is still a long way to go in establishing the environmental civil public interest litigation system in China, expanding the scope of the plaintiff subject for the purpose of social public interest protection is expected to enhance the litigation ability of the plaintiff subject, thus improving the environmental public interest litigation system and contributing to the environmental rule of law in China.

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