

Research on the Legal System of Environmental Public Interest Litigation from the Perspective of Sustainable Development

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Abstract: In recent years, with the rapid development of economy, environmental problems have become increasingly serious. The environment we live in is a "public good" in the social field, and the disadvantages of "market failure", especially external problems, are increasingly prominent in the sustainable development of the environment and the comprehensive development and utilization of resources. Environmental interests are different from ordinary personal interests. Because of the holistic characteristics of the environment, environmental infringement disputes often damage the overall environmental interests of the country and society. Therefore, environmental interests are a typical public interest. Therefore, the thinking of legal interpretation of procedural law is to determine the value choice, determine the interpretation space by literal interpretation, expand the interpretation of "direct interest" and "legal interest", and finally verify the rationality of the expanded interpretation by systematic interpretation, purpose interpretation and constitutional interpretation. Specifically, efforts are mainly made to ensure the filing and evidence collection of civil public interest lawsuits filed by environmental protection organizations, clarify the relationship between civil public interest lawsuits filed by environmental protection organizations and the ecological environment damage compensation system, improve the litigation willingness and ability of environmental protection organizations, and stimulate the participation enthusiasm of government and social forces, so as to effectively play the role of environmental protection organizations in filing civil public interest lawsuits.

1. Introduction

In the report of the 19th National Congress of the Communist Party of China (CPC), it was proposed to fully implement the basic strategy of "adhering to the harmonious coexistence between man and nature". However, despite the rapid development of modern economy in recent years, environmental problems have been deteriorating and environmental damage incidents have occurred constantly, which not only brought serious inconvenience to people's lives, but also caused huge losses to public interests, which runs counter to people's growing needs for a better life, so this situation needs to be changed urgently [1]. With the acceleration of China's economic development,

environmental pollution caused by industrial production is gradually becoming a hot field of public interest litigation. In the new environmental protection law, new provisions have been made on the qualification of litigants in EPI litigation (EPIL) [2]. There are many reasons for the increasingly serious environmental problems and increasing environmental disputes in China. The lack of environmental legislation is a fundamental and crucial reason, especially the current litigation system can no longer meet the needs of environmental litigation and can not solve the relationship between man and nature in the environment [3]. In the face of deteriorating environmental problems and in order to satisfy people's urgent desire for a better environment, the realization of environmental rule of law must be put on the agenda. Perfecting China's environmental public interest (EPI) system as soon as possible, especially clarifying the scope of litigation plaintiffs, so that a wider range of subjects can enjoy the right to file EPIL is the most direct means of EPI relief in the judicial field at present, and it is also an effective method to curb the increasingly serious environmental problems [4]. Individual citizens, no matter how many, can never really compete with government power effectively. However, if we gather together to form a non-governmental organization with certain organizational and management capabilities, its ability will be immeasurable. With the development and maturity of civil society, more and more citizens participate in the supervision of the operation of government power by participating in non-governmental organizations, and the development of EPIL is undoubtedly one of the normalized judicial paths [5]. In addition, the phenomenon of "low illegal cost and high law-abiding cost" is widespread in grass-roots environmental protection. The current environmental protection laws punish offenders too lightly, and the amount of administrative fines is often lower than the cost of environmental pollution control. Driven by interests, some polluters have embarked on the road of "developing first and then protecting, polluting first and then treating" by developing the economy. If you stay in such a social environment for a long time, the problems of environmental pollution and ecological destruction will eventually become inevitable [6]. "China needs EPIL!" As early as many years ago, China's legal theorists and legal practitioners have shouted for this. However, in practice, environmental organizations still face many constraints and challenges in bringing civil public interest litigation, showing a trend of gradual decline in participation [7]. How to provide support and protection for environmental protection organizations to initiate civil public interest litigation, so that they can actively use legal weapons to protect the public interests of the ecological environment, has become a practical problem that theoretical and practical departments urgently need to solve. In view of this, this article attempts to examine the current practice of environmental organizations filing civil public interest litigation, analyze the practical difficulties they face, and then propose effective solutions.

2. Overview of EPI litigation System

2.1. Definition of Public Interest Litigation and EPI litigation

EPIL is a new way of litigation in recent years, which refers to the litigation system in which the public is allowed the plaintiff when the EPI is or may be damaged due to the illegal or improper behavior of administrative organs or other public authorities, enterprises, institutions, social organizations and citizens, and the court shall investigate the responsible subject according to law [8]. Generally speaking, it refers to the activities of specific state organs, social organizations and citizens, in accordance with laws and regulations. Compared with private interest litigation, public interest litigation is a lawsuit to safeguard the public interests of the country and society [9]. The difference between the two is that the former is a lawsuit filed by a specific person to protect the exclusive rights of individuals, and the latter is a lawsuit that the public can file to protect the public interest unless otherwise specified by law [10]. Therefore, to understand EPIL, we must first start

with the understanding of public interest litigation. Public interest litigation originated from Roman law, which is a litigation system relative to private interest litigation, as show in Figure. Public interest litigation can be understood as a lawsuit filed by social entities in accordance with the law to protect public interests when they are harmed. Figure 1



Figure 1: Public interest litigation

In public interest litigation, the plaintiff can be an unspecified subject, and the purpose of his prosecution is not to pursue private interests, but to realize social public interests. He expressed his understanding of EPIL in this way: it refers to a series of systems in which members of society, including citizens, enterprises, institutions and social organizations, bring lawsuits to the court for the actions of relevant civil subjects or administrative organs in order to safeguard the public interests of the environment against infringement under the special provisions of the law. Plaintiff usually refers to a person who brings a lawsuit to the people's court in his own name and asks the court to protect his legitimate rights and interests, thus making the lawsuit established. And the original subject qualification usually refers to the right to file a lawsuit, that is, the qualification as a plaintiff in the lawsuit. According to the provisions of Chinese laws and relevant judicial interpretation, when people's procuratorates, social organizations, legally prescribed organs and relevant organizations that have been explicitly granted the qualification of qualified plaintiffs as plaintiffs, they are not required to have a direct interest relationship with the case.

2.2. The Feasibility of Establishing an EPI litigation System in China

The theory of environmental public trust believes that the non exclusiveness and non competitiveness of the environment naturally make it a kind of "public property", and the market itself inevitably has serious externality problems in solving the effective supply of public property. Therefore, the government accepts the entrustment of the public to manage the environment, a public property, and maximize the realization and maintenance of environmental and social public welfare. Although in many cases, the law as the applicable norm requires interpretation, such interpretation must not be influenced by the judge's personal beliefs and values. Therefore, the typical characteristics determine that the continental legal system treats litigation based on a standardized code of law. In this lawsuit, the court will decide whether the plaintiff's claimed rights exist. So, only the right holder and obligation holder in substantive law can become eligible parties, which determines that litigation adopts the structure of two party opposition. The litigation legal system also affects the form of implementation of public interest litigation cases to some extent. Even in countries with the same legal system, the litigation form for public interest litigation cases is not uniform. The first step to achieving EPIL is for qualified plaintiffs to file lawsuits, and the

court shall accept relevant lawsuits in accordance with legal provisions. However, the current procedural law's provisions on the plaintiff's qualifications hinder the implementation of this step.

Finally, it is inevitable, not a possibility, that the sued specific administrative act will affect the plaintiff's legal rights. Therefore, the establishment of China's environmental protection civil litigation system effectively makes up for this defect, makes China's civil litigation system more sound, and also provides strong legal support for China's environmental protection cause. At the same time, with the establishment of this system, the research on environmental protection legislation in China has also entered a new height. With the establishment and perfection of various related systems, the research on the theory of civil public interest litigation in China will be more in-depth, and on the basis of combining China's basic national conditions, a complete theoretical system of environmental protection civil litigation will be gradually formed, which is suitable for the needs of China's social development.

3. Perfection of plaintiff's subject qualification in EPI litigation in China

3.1. Incorporate individual citizens into the plaintiff's scope of EPI litigation

The most important factor for the protection of EPIs is the participation of the people. The higher the public's attention and participation, the greater the protection of public interests. Moreover, individual citizens are the most direct stakeholders in environmental public welfare and the largest group in society, and their power and role in protecting the environment can not be ignored. The first is to clarify the criteria for the identification of qualified institutions. Although the new environmental protection law has clearly defined the subject of EPIL, provinces can make more detailed confirmation through local legislation, and strive to substantially relax the criteria for determining the qualification of the subject of litigation. The second is to endow the provincial high court with certain rule-making power in specific judicial procedures, and to refine the practical measures taken by courts at all levels in the province in EPIL to help the plaintiff collect relevant evidence materials in accordance with legal procedures, so as to support the plaintiff's orderly EPIL and ensure the effective implementation of the main responsibilities of EPIL. For some social organizations that are unable to carry out EPIL because of financial difficulties, after being examined by the Standing Committee of the National People's Congress or a special committee, the provincial government will allocate certain financial subsidies to help them solve the difficulties of fund payment, and support the development of EPIL at the practical level. Many polluting enterprises are local taxpayers and leading enterprises, and they are inextricably linked with the government. The resistance of EPIL in local areas is naturally self-evident. Moreover, the "one-track system" also ignores the role of other social forces in environmental protection and cannot give full play to the initiative and initiative of social organizations and the public in environmental protection.

Only by establishing a public interest litigation system and granting social organizations and the general public the right to file lawsuits regarding public interests, can a mechanism for everyone to participate in public interest protection be formed, and the legal system for environmental protection be further improved. When designing the plaintiff system for EPIL, it is necessary to fully balance the relationship between administrative power and judicial power, that is, to consider the balance between administrative procedures and EPIL. We can refer to the administrative pre procedure in the United States for the design of this program. So when reviewing a case, the court needs to establish corresponding rules of proof, so that all parties must strive to disclose their own information, balance information differences, and make the judge's judgment as close to objective facts as possible. At present, there are various opinions in the theoretical community on the burden of proof in public interest litigation, such as the "defendant bears the burden of proof" theory, the

"plaintiff bears the burden of proof" theory, the "allocation of burden of proof according to legal requirements" theory, and the "allocation of burden of proof according to the content requested by the plaintiff" theory. In response to these situations, relying solely on the internal supervision mechanism of administrative agencies cannot comprehensively and timely protect citizens' environmental rights. At the same time, in today's market process, the legislative provisions that completely exclude abstract administrative actions from judicial review cannot meet the requirements of modern judicial review and do not conform to the concept of governing the country according to law in China. Therefore, in China's EPIL, the actionability of abstract administrative actions should not be ruled out, and it is necessary to include them in the scope of judicial review.

3.2. Determine the plaintiff of EPI litigation on the basis of legal interpretation

Through the legal interpretation of the relevant provisions of the Civil Procedure Law and the Administrative Procedure Law, the interest relationship between the plaintiff and the EPIL case is included in the category of "direct interest relationship" or "legal interest relationship", which provides the possibility for the start of EPIL. Because of this, every member of society who lives in the environment can file an EPI lawsuit to protect the EPI based on his environmental rights and interests and his responsibility to protect the environment. However, as some scholars have said, "In theory, any individual, organization and state organ can bring EPIL according to law, but from the perspective of litigation economy and litigation order, the plaintiffs in EPIL should be relatively fixed and unified." This has largely ensured the implementation of China's strategy of environmental protection and ecological civilization construction.

Regarding this point, we can refer to the advanced practical experience of developed capitalist countries in the West. The industrialization level of Western capitalist countries is ahead of China, and the problem of environmental damage is also very serious. While citizens enjoy the convenience of life brought by industrial development, they also fully appreciate the social harm caused by environmental pollution. Western countries were the first to use administrative supervision methods to solve environmental pollution problems. However, the effect received is not very obvious. Since the adoption of the environmental protection civil public interest litigation system, environmental protection issues have been effectively solved. With the participation of the public, the law enforcement efficiency of government administrative supervision departments is higher, and the pace of ecological civilization construction is also faster and faster. EPIL has received widespread attention from society, giving some environmental organizations in this field good influence and exposure. If these environmental protection organizations establish brand projects with social influence based on their rich experience in EPIL, it will attract more attention from enterprises, local governments, foundations and other entities, and provide certain funding. Therefore, it can be seen that although the law has stipulated that procuratorial organs have the qualifications of prosecutors, their qualifications are only obtained when certain prerequisite conditions exist. This leads to the possibility that the procuratorial organs may not be able to become qualified prosecutors in a timely manner within the statute of limitations, and when their qualifications for prosecution exceed the statute of limitations, they will lose their right to victory.

4. Conclusions

In recent years, although China's economy has developed rapidly and achieved fruitful results, it has also brought great harm to the environment, causing environmental damage and serious waste of resources, which makes the protection of environmental resources urgent. Among the many existing protection measures, EPIL is the most powerful way of judicial protection, and its unique characteristics determine that the more people participate, the more EPILs can be guaranteed. The

establishment of China's environmental protection civil public interest litigation system determines the responsibility of the whole society for environmental protection supervision from the legal level, which is helpful to mobilize the strength of the whole society to solve the increasingly serious environmental problems. With the support of the environmental protection civil public interest litigation system, China's environmental problems will inevitably be effectively solved. This article focuses on environmental non-governmental organizations in environmental administrative public interest litigation, namely whether they can obtain the plaintiff qualification, and if so, what rules should be designed. Therefore, based on the overall approach of raising, analyzing, and solving problems, the full text aims to define the plaintiff qualification of environmental administrative public interest litigation by Chinese environmental non-governmental organizations, and further construct appropriate systems to enhance the effective application of this argument in judicial practice.

References

- [1] Xie L, Xu L. *EPIL in China: A Critical Examination*[J]. *Transnational Environmental Law*, 2021, 20(2):30-34.
- [2] Jin F. *On the environmental civil public interest litigation system for the protection of the climate in China: Comments on two cases from a pragmatism perspective*[J]. *The Journal of World Energy Law & Business*, 2021, 14(1): 26-28.
- [3] Yan W. *The Zhenhua Case: the emergence of civil EPIL in China*[J]. *The Journal of World Energy Law & Business*, 2021, 2(4):16-18.
- [4] Chang Y C, Wang C, Khan M I, et al. *The legal system for environmental protection during exploration and exploitation of marine mineral resources in China*[J]. *Resources Policy*, 2020, 67(11):3-6.
- [5] Goodman M, Connelly J. *The public interest environmental law group: from USA to Europe*[J]. *Environmental Politics*, 2018, 27(6):10-14.
- [6] Chu J. *Vindicating public environmental interest: Defining the role of EPIL in China*[J]. *Ecology law quarterly*, 2018, 45(3):30-32.
- [7] Lian Y Q, School L. *Empirical Reflection and Theoretical Construction of the Third Party System for Administrative Public Interest Litigation*[J]. *Administrative Law Review*, 2019, 75(6):11-18.
- [8] Yu C. *A Study on Satisfaction of Judgment in Administrative Public Interest Litigation*[J]. *Administrative Law Review*, 2019, 68(4):16-19.
- [9] Zhai T, Chang Y C. *Standing of Environmental Public-Interest Litigants in China: Evolution, Obstacles and Solutions* [J]. *Journal of Environmental Law*, 2018(3):36-47.
- [10] Lin L H. *On the Space for System of Procuratorial Organs Initiating Civil Public Interest Litigation*[J]. *Administrative Law Review*, 2018, 59(1):15-17.