

# Open Judicial Cases Study on Environmental Public Interest Litigation Filed by Procuratorial Organs from 2017 to 2020

Jiani Huang<sup>a,\*</sup>, Xueqin Li<sup>b</sup>, Wanmei Mu<sup>c</sup>

Law School, Shanxi University of Finance and Economics, Taiyuan 030006, China

<sup>a</sup>d15536827527@163.com, <sup>b</sup>346188259@qq.com, <sup>c</sup>muwanmei@qq.com

\*Corresponding author

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**Abstract:** In 2017, China's legislation formally established the plaintiff status of environmental public interest litigation filed by procuratorial organs, which started late and is still in the exploratory stage, and the legal system and procedures need to be improved urgently. From the perspective of "open judicial cases", this paper focuses on the judicial cases of "environmental public interest litigation brought by procuratorial organs" in China from 2017 to 2020.

## 1. Introduction

In July 2015, with the authorization of the standing committee of the National People's Congress, the supreme people's procuratorate launched a pilot program of public interest litigation in the fields of ecological environment and resource protection, protection of state-owned assets, transfer of state-owned land use rights, and food and drug safety. After two years of pilot work, the standing committee of the National People's Congress amended the Civil Procedure Law and the Administrative Procedure Law in July 2017, formally establishing the procuratorial public interest litigation system.

## 2. The necessity of environmental public interest litigation by procuratorial organs

The nature of the environment itself has already broken through the scope of private interests. Environmental pollution involves the interests of not specific social subjects, and relying solely on private interests litigation cannot effectively relieve the public interests of the state and society [1]. At this time, as the highest defender of the state order, the procuratorial organs exercise the procuratorial power to launch environmental public interest litigation to safeguard the physical and mental interests of the people, which is the embodiment of their functions. On the other hand, direct victims of environmental pollution are sometimes difficult to identify or unwilling to sue, which allows the ecological environment to continue to deteriorate. In order to safeguard the environmental interests, it is necessary for the procuratorial organs to file a lawsuit.

## 3. Development status of environmental public interest litigation filed by procuratorial organs in China

In 2017, the legislation formally established the plaintiff status of procuratorial organs. It can be seen that China's environmental public interest litigation started late and is still in the exploratory stage, and the legal system is in urgent need of improvement. According to the supreme people's court, from January 2015 to December 2019, courts across the country heard 5,184 environmental public interest lawsuits, of which 330 were filed by social organizations and 4,854 by procuratorial organs. In October 2018 alone, 16,154 cases were filed by procuratorial organs across the country, 13,690 suggestions and announcements were made by procuratorial organs to relevant administrative organs, and 350 cases were finally filed by people's courts. [2] From the pilot project in 2015 to the formal legislation in 2017 and then to the development of the environmental public interest litigation

system in 2020, China's procuratorial organs continue to improve the environmental public interest litigation system, especially after the legislation in 2017, the number of cases increased rapidly, now has formed a development model of civil and administrative public interest litigation co-existence with the pre-litigation procedure as the main litigation supplement. According to the Public Cases of China Judgment Document Network, the Magic Weapon of Peking University, Wolters Kluwer and Itslaw, our group took "2017", "2018", "2019" and "2020" as the time index respectively, took "procuratorate" and "environmental public interest litigation" as the key words, deleted and sorted out a total of 199 cases and analyzed them.

#### **4. Analysis of different angles of open judicial cases**

##### **4.1 The defendant type**

The data from 2017 to 2020 show that the majority of defendants in environmental public interest lawsuits filed by procuratorial organs are citizens. Among the 199 cases sorted out, citizens accounted for the largest proportion of the litigation subjects, with a total of 115 cases, followed by 38 cases of administrative organs, 10 cases of companies, 3 cases of sole proprietorship enterprises, and 11 cases of companies and citizens, sole proprietorship enterprises and citizens, administrative organs and citizens, and companies as "combinations" of co-defendants. The types of defendants in environmental public interest litigation also show fluctuating development. In the early stage of environmental public interest litigation, most of the litigants were environmental protection organizations. In the first environmental public interest lawsuit reported by local media, most of the defendants were private citizens, which was once dubbed "swinging a big stick to hit a mosquito" by the media. With the country's strong support for environmental protection, the situation has changed. In the research conducted in 2015 and 2016, "the identity type of the defendant is mainly enterprise legal person" [3]. However, among the public cases studied, citizens account for the largest proportion, which partly explains the state's efforts to crack down on citizens' destruction of the ecological environment in 2017.

##### **4.2 The illegal act of environmental pollution**

(1) New cases of "ecological destruction" were developed

Unlike the "emissions" of environmental pollution, ecological destruction is a "take". Cases of ecological destruction generally include exploitation of trees, destruction of wildlife resources, illegal exploitation of mineral resources, etc. In case statistics, the cases of ecological destruction far exceed the cases of environmental pollution, which shows that China has given a high degree of attention to the ecological environment. However, the increase in the number of cases alone cannot prove that the ecological destruction in China has been effectively managed. After an in-depth investigation of the 97 cases, it was found that 97 cases had certain "water content", and many of them were serial crimes, such as the judgment of the case of pollution liability dispute filed by the people's procuratorate of Baicheng city of Jilin province against Zhang in 2019. These cases had the same type of cases and the same pollution objects.

(2) In the open cases, the number of air pollution and water pollution cases is significantly less

At present, air and water pollution is still a major pollution phenomenon in China, but the number of cases of air pollution and water pollution in open judicial cases is relatively small. In judicial practice, the number of criminal cases of air pollution and water pollution is small, and the difficulty in sentencing them prevents the procuratorial organs from obtaining relevant clues and initiating lawsuits in time. [4] The number of cases of soil pollution, hazardous waste pollution and solid waste pollution did not change significantly from previous years, but in the context of ecological civilization construction, the procuratorial organs still need to strengthen the enforcement of these three cases.

### **4.3 Environmental administrative public interest litigation request**

From the summary of the cases, it can be concluded that the main characteristics of the litigation request when the procuratorial organ brings the environmental public interest lawsuit are as follows.

#### **(1) The claim is formalized**

Through the empirical analysis of the environmental administrative public interest litigation cases, it can be concluded that the procuratorial organs' litigation requests mainly include "confirming the violation of law" and "continuing to perform duties". There are other claims made by some procuratorial organs, but the number is small. The reason may be that if the procuratorial organs only require the administrative organs to perform their duties. Administrative organs perform their duties during litigation, and the court will not be able to support the prosecution's appeal. In order to reduce the risk of litigation, procuratorial organs often focus on simultaneously raising the appeal of "confirming the violation of law" and "continuing to perform their duties", and pay little attention to the rest of the appeals.

#### **(2) Lack of punitive appeal**

Punitive damages means that the defendant's legal liability should be far greater than the actual loss caused by his behavior. Although the lawsuit claims in the cases also require the defendant to pay the ecological environment damage fee, the damages claimed by the claim take the actual damage caused to the environment as the content of compensation. For example, in an environmental public interest lawsuit in Chongqing in 2019, the amount of environmental damages ultimately borne by the defendant was 186,598.33 yuan. These include 431.25 yuan for property damage, 53,760 yuan for ecological and environmental damage, 105,982.08 yuan for emergency treatment and 26,425 yuan for emergency monitoring. If the defendant is required to bear the compensation for ecological damage in a punitive way, it will give a bigger warning to the subject that may cause environmental pollution, so as to eliminate their offense of harming the environment.

### **4.4 Means of proof**

(1) The way of proof in procuratorial organs is various, most of which are low cost and easy to obtain

According to the statistical findings, most of the defendants used low-cost and convenient evidence to prove the defendant's destruction of the environment, such as the defendant's identity certificate, investigation records, witness testimony, defendant's confession, on-site pictures, videos, etc. With the development of science and technology, GPS schematic diagram (location and area), satellite pictures and aerial photography of the scene environment using unmanned aerial vehicles have appeared, which greatly enrich the way of proof for environmental public interest litigation in China. When more complex environmental damage is involved, we will make on-site environmental test report, entrust appraisal agencies to conduct environmental appraisal, and issue appraisal opinions or assessment reports. But according to the study of cases, found that the appraisal charge more expensive, most of the 5000 or more, that leads to increased cost of proof, aimed at the problem of our country also appeared to take expert auxiliary way, you can listen to the relevant expert advice, reduce costs, but the expert advice although influence big, still do not belong to the kind of legal evidence in China, so we still need to find more low cost, high efficiency way of proof, so as to improve the efficiency of lawsuit.

(2) On the proof procedure, the procuratorial organ will basically carry out the announcement of preposition procedure according to law

Reflection on the announcement period Settings, prosecutors want cases filed a lawsuit against environmental pollution damage, must after 30 days of the announcement period, and to support the relevant departments and relevant organizations to prosecute first, in this long "waiting period" is likely to miss environment best forensics time or cause greater damage to the environment, not recover in time management.

(3) There is a vacancy in the prosecution's procedure for supporting prosecution

According to the law, social environmental protection organizations should be the first plaintiff in environmental civil public interest litigation. However, the legislators set the threshold of litigation in the main body position of environmental protection organizations, which was originally for the purpose of preventing abuse of litigation, but also inhibited the enthusiasm of civil organizations. At present, China's civil procedure law does not allow individuals to file environmental public interest lawsuits, and the threshold for environmental protection organizations to file lawsuits has been raised. It can be seen that in recent years, there is not enough private power to protect ecological and environmental public interests, and the procuratorial organs support the prosecution of fewer cases, or even empty.

## **5. The direction of environmental public interest litigation initiated by procuratorial organs**

### **5.1 To strengthen legislation**

First of all, the law should make clear whether the procuratorial organs should take the initiative to fight for the right of public interest litigation and the source of the cases should be from where the provisions, to avoid confusion of the source of the cases, while ensuring the effectiveness of public interest litigation. Secondly, regarding the formalization of the performance of administrative organs in the environmental administrative public interest litigation, it is necessary to intensify efforts and use supporting facilities to ensure the improvement of the performance efficiency of administrative organs. Thirdly, reflect on the gap between the procedure stipulated by law and the application in practice, and determine the effectiveness of the system setting through practice test, such as the setting of the announcement period. Finally, clear legal provisions or special laws should be made on the judgment of cases and other problems existing in the implementation of post-litigation procedures to enhance the legal basis of environmental public interest litigation.

### **5.2 Close contact with citizens**

(1) We strongly support environmental organizations in improving their capacity for public interest litigation

First, the government should guide environmental protection organizations to cultivate the awareness of public interest litigation from the perspective of concept, publicize the significance of environmental public interest litigation to public interests, and enhance the independent will of environmental protection organizations to file environmental public interest litigation. Secondly, it attaches great importance to the training of daily legal knowledge of environmental protection organizations, and encourages and supports professional legal service organizations to provide litigation guidance and services for environmental protection organizations. Thirdly, in view of the lack of litigation funds of environmental protection organizations, especially grassroots environmental protection organizations, the government should be committed to the establishment of a special fund for environmental public interest litigation, so that environmental protection organizations can be fully funded, and continuously improve the enthusiasm of environmental protection organizations to file environmental public interest litigation.

(2) Publicize the participation of the masses in the context of shared governance

The purpose of environmental public interest litigation is to protect and improve people's livelihood. Therefore, in the context of shared governance, people should not only share "blue sky, white clouds, green mountains and clear water", but also participate in environmental public interest litigation for "co-governance".

### **5.3 Expand the areas and categories of public demonstration cases**

Of the 199 cases made public, 97 involved ecological destruction, 23 involved hazardous waste pollution, 31 involved water pollution, 16 involved soil pollution, 10 involved solid waste pollution and 2 involved air pollution. Open cases can expand the scope of cases appropriately, increasing air pollution, water pollution and soil pollution cases. Especially after the Soil Pollution Prevention and

Control Law takes effect in 2019, we should respond to it. At the same time, we can increase the number of cases in which the main defendants are companies, enterprises, etc. At present, the majority of the cases are citizens, which has a certain impact on the number of "ecological damage" cases.

## **6. Conclusion**

This paper, from the perspective of "open judicial cases", adopts the methods of case empirical analysis and social empirical analysis to analyze the characteristics of the cases in terms of the types of defendants, the illegal behaviors causing environmental pollution, the claims, the way of proof and the defense of the defendants in environmental administrative public interest litigation. Thus, countermeasures and suggestions are put forward for the construction of environmental public interest litigation by procuratorial organs in China.

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