

The Empirical study on Environmental Public Interest Litigation Filed by Procuratorial Organs in Shanxi Province of China

Jiani Huang^{1,a,*}, Peiyao Xu^{1,b}

¹Law School, Shanxi University of Finance and Economics, Taiyuan, 030006, China;

²School of Business Administration, Shanxi University of Finance and Economics, Taiyuan, 030006, China;

^a d15536827527@163.com, ^b 343886938@qq.com

*corresponding author

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Abstract: The development of environmental public interest litigation system was late in China. In 2015, China began trials of environmental public interest lawsuits by prosecutors in 13 provinces, like Beijing. After a two-year pilot, legislation formally established the main role of procuratorial organs in environmental public interest litigation by 2017. In response to the call of the state, Shanxi Province planned to promote the procuratorial public interest litigation in the overall situation of economic and social development from July 2017 to June 2019. This paper takes Shanxi Province as the empirical research area to study the development status of environmental public interest litigation from 2017 to 2019. By studying Shanxi Province, we can not only learn the situation of non-pilot areas of environmental public interest litigation in China, but also find some problems through the analysis of data and cases. In addition, the development of the environmental public interest litigation system initiated by the procuratorial organs can promote the development of the legal system in China, better protect the ecological environment and expand the development of environmental protection.

1. Introduction

Shanxi, also called the three jin, is known as the "cradle of Chinese civilization" and located in the north of China. With the adoption of the civil procedure law and the administrative procedure law on June 27, 2017, China formally confirmed the "final plaintiff" status of procuratorial organs in environmental public interest litigation. In order to respond to the call of the state and improve the ecological environment, the procuratorial organs of Shanxi Province focus on the field of ecological environment protection. According to the data survey, from July 2017 to the end of June 2019, a total of 12,058 cases of public interest litigation clues were found, of which 9,003 cases were filed, 8,371 cases were recommended before the lawsuit was issued, 142 cases were prosecuted, 92 cases were concluded by the court, of which 4 cases were mediated, 3 cases were withdrawn, and 85 cases were judged. The probability of winning a lawsuit is 100%. [1] In 2018, the main case handling index of public interest litigation in Shanxi Province ranked the eighth in China. So far, the procuratorial public interest litigation in Shanxi Province has presented a good trend of integration, internal and external linkage and steady advance.

2. Promotion Conditions of Public Interest Litigation in Shanxi Province

2.1 The Ecological Environment is still not optimistic

According to the data from 2005 to 2015, the comprehensive index of ecological environment is generally on the rise. However, according to the 2017 report of Shanxi provincial bureau of statistics, we found that the environmental quality and ecological status of Shanxi have not been fundamentally improved. [2] It can be seen that the task of improving the ecological environment in Shanxi is still very arduous. According to Pressure-State-Response (PSR) model. The main factors affecting the

ecological environment in Shanxi are forest coverage rate, grassland area and harmless disposal rate of household garbage. [2]The ecological safety index increased from 0.2393 in 2004 to 0.8819 in 2013. Thus it can be seen that the overall development of ecological environment in Shanxi Province tends to be good. In view of the defects of some systems and mechanisms, the procuratorial organs have put forward some measures to improve the ecological environment, such as optimizing the industrial layout, adjusting the industrial structure, strengthening the ecological compensation mechanism, and initiating a public interest lawsuit for environmental protection.

2.2 The Introduction of Modern Judicial Technology

In recent years, Shanxi Province has accelerated the construction of smart courts, comprehensively and innovatively promoted the development of electronic files, and strived to improve the information level of trial management. Through the use of big data management and service platform to manage and judge cases, the court has improved the quality, efficiency, effect and other five key indicators of the trial evaluation notice, and shortened the trial time. The courts have continuously strengthened the construction and integration of judicial open platform and tried cases in public, which has greatly enhanced the judicial prestige.

2.3 Innovative Development of Working Mechanism of Procuratorial Public Interest Litigation

The procuratorial organ of Shanxi Province has made great efforts to build the "NO.1" handling mechanism, that is, the procurator plays the leading role in handling cases and supervising the handling of cases. The integrated handling mode of handing over, supervising, co-organizing and designating jurisdiction has been effectively used in the public interest litigation by the provincial procuratorates, and the handling mechanism of public interest litigation has been jointly built with the whole province. At the same time, it also standardized and improved the handling, management and evaluation mechanism of public interest litigation cases, which not only promoted the construction of case handling, but also exchanged the experience of case handling, and achieved the result of multiple actions with one stone

3. Analysis of Relevant Data on the Investigation of Environmental Public Interest Litigation

3.1 Environmental Public Interest Litigation is Mainly Initiated by Procuratorial Organs

According to the White Paper of Public Interest Litigation Work of Shanxi Province Inspection[1], Procuratorial organs found 12,058 case clues, of which 9,003 were filed, 8,371 were Suggestions before filing a lawsuit, and 142 were prosecuted. Among them, 5,965 were found clues in the field of ecological and environmental protection, 4,457 were filed, and 4,006 were Suggestions before filing a lawsuit. In the field of ecological and environmental protection, clues, filing and procuratorial Suggestions accounted for 49.5 percent, 49.5 percent and 47.9 percent of the filing of public interest litigation respectively, nearly half of the total. It can be seen that environmental public interest litigation occupies a very important position in public interest litigation. Through searching the public cases of "China judgment document network" and "no-suit cases", it is found that there are only two types of environmental public interest litigation cases in Shanxi Province, namely villagers' committee and environmental protection organization. We have reason to believe that the number of procuratorial organs as plaintiffs is more than other subjects put forward, and more powerful than other subjects.

3.2 The Environmental Public Interest Litigation Initiated by Procuratorial Organs is Mainly Civil Cases Incidental to Criminal Cases

There were 182 civil public interest litigation cases, accounting for 2% of the 9,003 cases filed. Among the 142 public interest litigation cases, 22 administrative public interest litigation cases, accounting for 15.5%; Criminal incidental civil public interest litigation cases 120, accounting for 84.5%. From the perspective of case types, administrative public interest litigation cases are the most filed cases, which shows that in practice, administrative organs often have omissions in the

performance of their duties. However, they will actively atone for their mistakes after receiving a pre-prosecution recommendation from the prosecution. Among the cases brought, the criminal incidental civil public interest litigation cases are the most, so it can be seen that the procuratorial organs are looking for the case clues in the course of performing their duties.

3.3 The Environmental Public Interest Litigation Brought by the Procuratorial Organs has Achieved Certain Results

According to the investigation and research of relevant data, environmental problems in Shanxi mainly include ambient air, water, sound, radiation and natural ecological environment. Combined with the research direction of the project, the following four aspects were studied:

3.3.1 Ambient Air

In 2018, although the air quality of 11 prefecture-level cities in Shanxi Province failed to meet the national level 2 standard, they reached the standard on average 207 days, accounting for 56.8 percent of the effective monitoring days, an increase of 1.6 percent over 2017. Meanwhile, the average number of heavily polluted days was 14 days, accounting for 3.9 percent of the effective monitoring days, a decrease of 1.4 percentage points over 2017.

Air pollution: In 2018, the province's total sulfur dioxide emissions were 895,800 tons, down 10.25 percent from a year earlier and 20.06 percent from 2015, and 210,100 tons less than 2015's key projects. Nitrogen oxide emissions totaled 793,500 tons, down 4.80 percent year on year and down 14.75 percent from 2015. Compared with 2015, key projects have reduced emissions by 151,200 tons. In 2018, the annual average concentrations of sulfur dioxide (SO₂), nitrogen dioxide (NO₂), inhalable particulate matter (PM₁₀), fine particulate matter (PM_{2.5}), carbon monoxide (CO) and ozone (o₃-8h) in 11 prefecture-level cities decreased by 41.1%, 4.8%, 1.8%, 6.8%, 16.7% and 2.2%, respectively.

3.3.2 Water Environment

In 2018, the province's surface water quality was moderately polluted. Of 100 sections of monitoring water sets, 58 sections had excellent water quality (I ~ III class), accounting for 58.0% of the total number of monitoring section, up 2.0% over 2017; Severe pollution (worse V) sections is 23, accounted for 23.0%, no change from 2017.

Water pollution: in 2018, chemical oxygen demand (cod) emissions in Shanxi Province were cut by 15.94% compared with 2015. Ammonia nitrogen emissions were cut by 12.97% compared with 2015, and the emission reduction of key projects reached 3,400 tons.

3.3.3 Radiation Environment

The radiation environment quality of the whole province is good.

3.3.4 Natural Ecological Environment

By the end of 2018, the province had built 46 nature reserves, eight at the national level and 38 at the provincial level. Nature reserves cover 1.1 million hectares, accounting for 7.4% of the province's land area. However, the air pollution in Shanxi is still the most serious area, the composite index is still the lowest, the average concentration of sulfur dioxide is the highest absolute value of the provinces, it can be seen that the pressure to improve the environment is huge.[4]

In the past two years, with the support of the government and the provincial party committee, the procuratorial organs in Shanxi Province have made remarkable achievements in the procuratorial public interest litigation. In the field of ecological environment protection, repair the 22477 mu in Shanxi destroyed forest land, cultivated land, wetlands, grasslands, clean up the 157.47 km river pollution and illegal use, 4954 mu of polluted water source protection, water supply, soil, cleared more than 17.93 million tons of various types of solid waste, living garbage and production of 41431 tons of hazardous waste, urge and shut down 119 enterprises that cause environmental pollution and regulation, shut down 59 not dealt with in accordance with the eia, shut down 103 illegal farms and

regulation. Combined with the above environmental data of Shanxi and the work of Shanxi people's procuratorate in the past two years, it can be seen that the progress of environmental public interest litigation initiated by the procuratorate has improved the water environment and air environment of Shanxi to a certain extent.

4. Research on the Operation of Environmental Public Interest Litigation

In order to create an ecological environment of blue sky, clear water and clean land in Shanxi Province, the procuratorial organs of the whole province have carefully arranged their work and taken the initiative to deal with many environmental pollution cases that the masses have reacted to. They have also sorted out some typical cases, among which Datong Hunyuan mining enterprise case and Linfen coal industry case are the typical cases.

4.1 Datong Hunyuan Mining Enterprise Case

The case of mining and damaging the ecological environment and resources by Datong Hunyuan mining enterprises, which were supervised and handled by the supreme people's procuratorate of Shanxi Province, was a typical case of public interest litigation full of influence and vibration, which was handled by Yang Jinghai, the chief prosecutor of Shanxi provincial people's procuratorate and the general prosecutor of Shanxi Province. Under the leadership of the chief procurator of the provincial procuratorate, procuratorial organs of counties issued 196 procuratorial Suggestions to relevant administrative organs, transferred 31 suspected criminal clues to the public security organs, punished 21 people, and transferred 10 suspected job-related criminal clues to the commission for discipline inspection and the commission for supervision of the people's procuratorate.[5]

At present, the mining enterprises involved in the case have all stopped mining and some illegal mining enterprises are being inspected and demolished. The government of datong city and hunyuan county have launched comprehensive treatment and ecological restoration In to make hunyuan county a model county for ecological restoration of mines and a typically pilot county for eco-tourism in the whole region.

4.2 Linfen Coal Industry Case

During the work of the procuratorial organs, they found a case in linfen city that seriously endangered the safety of human and animal lives. This case was caused by a coal company illegally stacking coal, which not only destroyed the vegetation, but also released harmful gases. Over time, this attracted the attention of the government. On the basis of the active rectification of the case, the county government has invested more than 75 million yuan. At the same time, 45 areas and 63 prominent environmental problems in the county were addressed and rectified. This case is a typical case of "starting with a separate case and supervising similar cases", which truly realized the social effect of "handling a case and governing most regions"

5. The Prominent Problems in the Progress of Environmental Public Interest Litigation in Shanxi Province

5.1 The Pre-litigation Procedure is Vague

The pre-litigation procedure, as a necessary pre-procedure for environmental public interest litigation, plays an irreplaceable role in environmental protection. In the process of some judicial practices in Shanxi, the procuratorial Suggestions of the procuratorial organs are often formalistic, the contents of which are not specific enough and the objects are not clear enough. Therefore, the actual application of the pre-litigation procedure is not satisfactory and may even lead to improper intervention of the executive power.

5.2 The Transfer of Criminal Clues is Complicated

In the public interest litigation cases of Shanxi Province, the public interest litigation cases

initiated by the procuratorate are mainly civil public interest litigation incidental to criminal cases. In practice, due to the lack of rigid restraint mechanism and legal system within the people's procuratorate, as well as the lack of professional knowledge of criminal prosecutors, it is easy to cause the omission of case clues. It is still a difficult problem to transform criminal cases into civil public interest litigation and administrative public interest litigation. If criminal clues can be "re-used", it is beneficial to reduce the cost of identification and get rid of the shackles of investigation of public interest litigation cases.

5.3 Supervision of Grassroots Administrative Organs is not in Place

Among the 9,003 cases filed by the procuratorate and 142 cases prosecuted, it can be seen that the administrative public interest litigation cases are greatly reduced in the prosecution. It can be seen that in the process of practice, administrative organs often appear dereliction of duty. Administrative organs shall perform supervisory duties on behalf of the state. While they perform their duties in various ways, achieving good oversight requires money, time and approval.

5.4 Case Handling Equipment is Relatively Backward

Traditional investigation methods in Shanxi Province are relatively backward, such as recording or video recording, photography and other traditional investigation equipment are not advanced enough, which easily lead to difficulties in investigation. Although unmanned aerial vehicle forensics has been introduced in some provinces, practical application has encountered some problems due to price, lack of technical personnel, etc.

5.5 High Litigation Costs

The litigation fees to be paid for bringing a lawsuit shall be paid in advance by the plaintiff in accordance with the provisions of the "measures for the payment of litigation fees" and shall be accumulated by the plaintiff in accordance with the proportion. Procuratorial organs need to pay their own advance notice fee and appraisal fee in the process of filing a lawsuit. Due to the lack of special funds for public interest litigation, procuratorial organs are likely to suffer from excessive economic pressure and work difficulties.

6. Conclusion

By analyzing the relevant data, typical cases and existing problems of Shanxi Province and studying the development of environmental public interest litigation system initiated by procuratorial organs in non-pilot areas, we can find the gap between theory and practice. If the procuratorial organs want to expand the scale of promotion, they must improve the legal system from the legislative, judicial, law enforcement and other aspects, or it is difficult to promote. Especially at the theoretical level, the state should timely pay attention to the development trend of environmental public interest litigation, discover problems from practice, and formulate relevant laws and judicial interpretations, so as to provide a good development environment for the legal system of environmental public interest litigation filed by procuratorial organs.

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