

Analysis of Environmental Civil Litigation System

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Abstract

"Civil Law" on 55 for the first time make it clear that public interest litigation, Which has great significance in the history of the development of public interest litigation system, and marks that the legislative environment charity toward maintaining judicial relief mechanism has taken a decisive step. However, There is only one provision about the Public Interest Litigation in the "Civil Law", Which only provides a legal basis for the creation of this system, so, the implementation of the rules of procedure still need to be improved, For example ,the Legislature makes Legislative interpretation and Judiciary makes Judicial interpretation . The author intent to find some problems exist in practice and makes the appropriate sound advice basing on the analysis of connotation and denotation of Environmental Civil Litigation .

Keywords- *Environmental Civil Litigation; public interest; legislation; environment charity; private interest*

I. INTRODUCTION

Public interest litigation originated in Roman law, and it also known as "the people's complaints," "public lawsuit." Roman jurists divided litigation into public interest litigation and private interest litigation, public interest litigation in order to safeguard the public interest, any citizen has the right to mention it, and the private interest litigation is to be limited to some specific people's litigation. The public interest. Generally it believes that the "public interest" means non-exclusive interest in the consumer, such as the air we breathe every day, road, these are not occupied by a single person, but may be used by everyone, so, the "public interest" is different from private interests; at the same time public interest

is indivisible, it cannot be divided according to size ratio.

Public Interest Litigation, with private interest litigation to protect the interests of private is tied exists, and it refers to a litigation system for any organization or individual can base on the relevant laws and regulations, to appeal to the people's court, for the behavior of violation of the law, violated the national interests and public interests ,and the court will pursue its legal responsibilities. Environmental Public Interest Litigation is a litigation system in order to protect the environment and the establishment of public interest. On the definition of the concept of environmental public interest litigation scholars have different views, some people think of environmental public interest litigation should be defined separately from the criminal, civil, administrative three areas according to the particularity of their nature; it was argued to be defined from both broad and narrow.

There is no clear legal definition for public interest in our country, in view of the definition of public interest litigation has narrow and broad, the narrow Environmental Civil Litigation is to be limited to environmental rights of the public and other related rights. The view of Supporters of broad definition of Environmental Civil Litigation is that: Any person (including citizens, legal persons, social groups or national agencies, etc.), in order to protect the environment, object to stop damage to the environment and to hold public interest harm can accesses to court. I believe that the environmental public interest litigation is a special type of litigation. Compared with the traditional, general civil litigation, administrative litigation, environmental public interest litigation has its particularity. First, the environmental benefits as diffusion of benefits,

showing more public interest. Therefore, the maintenance of environmental public interest litigation is environmental public interest, in particular, is to protect the interests of the national environment, environmental benefits and social environmental benefits of an unspecified number of people, and not just private interests being damages. Secondly, the environmental public interest litigation prerequisite for prosecution is not limited to the interests had been violated of their own . Environmental Public Interest Litigation does not require a direct interest in the relationship between the plaintiff and the interests of the damage, it may be compromised in order to protect the interests of others or the public.

II. FEATURES OF ENVIRONMENTAL CIVIL LITIGATION

A. *The Range of Plaintiffs and Defendants of Environmental Civil Litigation is Wide*

In Environmental Civil Litigation, the plaintiff sued the foundation does not lie in their own interests have been infringed, or some kind of stress, but that's because they want to protect the interests of the public enterprises, and protect the interests impaired because of government agencies or other personal offenses . So long as the situation that harm the interests of the public welfare and ecological balance of the environment occurs, anyone can sue. Therefore, The range of the plaintiff of Environmental Civil Litigation is wide, the plaintiff may be citizens, corporations, government agencies or non-governmental organizations. The defendant of Environmental Civil Litigation includes Individuals, businesses or community organizations and Administrative organs, that is, the range of defendant is also wide .

B. *The Purpose of Environmental Civil Litigation is Protecting Social Welfare*

Environmental Public Interest Litigation has a clear purpose, which is to protect public environmental interests, different from the purpose of protecting private rights or public rights of traditional

litigation, behavior as long as the violation of the social environment or endanger the public interest can be prosecuted. Of course, this requires that the perpetrator have only illegal, it does not require must be actual damage. After all, more focused on preventive environmental public interest litigation, compensation is only a secondary function of a rib.

As mentioned above, the purpose of Environmental Civil Litigation is not in the interests of a few people, but to protect the public environmental interests, or to protect the public environment from damage, or to recover and make up environment which has been damaged. Therefore, Environmental Civil Litigation is a nonprofit judicial activity.

C. *Environmental Civil Litigation has a Preventive Effect on Avoiding Damages*

Environmental public interest litigation not only play a relief role to harm has already occurred , but also for environmental damage may occur in the future play a role in the prevention and avoidance. Because of environmental tort has a relatively long-term, the results of many environmental violations at the time did not appear, and after going to spend some time to become apparent, and the results of these hazards are often difficult to restitution. Therefore, prevention of the occurrence of the damage is very important to allow the subject of litigation proceedings against dangerous behavior, in order to maximize preserve the public interest .

In judicial activities based Environmental Civil Litigation, the plaintiff requested the defendant can not only carry out monetary compensation for damages, and may require the defendant to take effective measures to prevent environmental damage result occurred, to avoid damages expanding. That is, Environmental Civil Litigation should not only focus on the events that have occurred in the past remedies, but also has to point to the future, therefor the Environmental Civil Litigation has a preventive effect on avoiding damages.

D. Environmental Civil Litigation Reflect Democracy

Environmental Civil Litigation reflects democracy, it gives the public a right of action to safeguard the public interest, which is the development direction of modern legal society. Principle of public participation is a basic principle, but compared to other public participation, judicial proceedings is the most effective and direct means, which has a great significance of democratically environmental activist.

III. NECESSITY OF ENVIRONMENTAL PUBLIC INTEREST LITIGATION SYSTEM

The full exercise of environmental rights of citizens, through public participation to achieve environmental protection, which requires the establishment of environmental public interest litigation objective. Environmental damage will result in widespread social in nature, rely only on the power of government is often difficult to achieve full and effective protection. Therefore, in accordance with the principles of public participation, "the Constitution", Section 2, paragraph 3, mentioned point of view, be able to set up an environmental public interest litigation, through public scrutiny, to assist in monitoring the work of the executive authorities, to protect public environmental interests, is one way to supplement government function. This can not only increase public awareness of environmental protection, but also to monitor and prevent illegal administrative organ against the environment. Coupled with environmental damage is irreversible, before the destruction of the environment, to allow citizens to exercise their rights, to prevent consequential damages, is an effective way.

In recent years, we take more and more attention to environmental protection, put forward the goal of building a resource-saving society, the whole country under the positive response made a more significant results. But there are still some

companies, regional and even local governments to make some behavior in their own interests to the expense of resources and the environment, these blinkered approach if not curbed, it will seriously affect our sustainability and social harmony and stability. So we must establish environmental public interest litigation system to punish offenders and protect the public's environmental rights.

China needs to establish a more perfect system of environmental public interest litigation, one important reason is the urgent need of environmental safety. With the development of economic globalization, foreign capital and enterprises to enter our country, transnational environmental pollution and the consequent transfer of garbage has become difficult to solve. Therefore, the establishment of environmental public interest litigation has become a top priority of the current legislation.

IV. ANALYSIS OF CURRENT LEGISLATION AND PROBLEMS OF CHINA'S ENVIRONMENTAL CIVIL LITIGATION

In recent years, China's economic has rapidly developed, and environmental issues become increasingly prominent. Compared with developed countries, we find that the price is painful that Sacrifice the environment for economic development , the famous London smog events of the last century, 50 million people died in a year, the same event staged in China, In recent years, China's North and East region severe fog and haze, most people go to the hospital because of respiratory disease in the winter, and environmental pollution has seen a serious threat to people's health. However, in practice, the way of protect public environmental benefits is very difficult. To solve this problem, before the Civil Procedure Law Amendment in the 2012 , our people had also undertaken a number of Environmental Civil Litigation, such as the typical "2010 Environmental charity litigation in Yunnan Province, "which is the first case of Environmental Civil Litigation in china, but the case is lack of basic legal support, At that time the relevant provisions of Environmental

Civil Litigation does not yet exist in the the legislation. After the amendments to the Civil Procedure Law in 2012, " Civil Procedure Law " Article 55 provides Environmental Civil Litigation, which is an important step forward in China's Environmental Civil Litigation.

While the Environmental Civil Litigation system has been established in "Civil Procedure Law" , but this provision is not clear, and does not specify which organs and tissues in compliance with the requirements of the provisions, there is no explicit provisions on environmental public interest litigation in civil procedure, resulting in many problems in practice.

A. *The Plaintiff is not Clear Qualifications*

The plaintiff qualifications of Environmental Civil Litigation must be clear, the plaintiff qualifications, which determines that who can lift the Environmental Civil Litigation. In accordance with the provisions of Article 55 "Civil Procedure Law" is the "authorities and relevant organizations law" may bring an Environmental Civil Litigation, but this did not make a more clearly defined. "Bodies and relevant organizations law" actually refers to what organs and tissue, which is the first problem Environmental Civil Litigation face in practice.

There are two ways to make the qualifications of plaintiff clear. The first method is Looking basis from existing law in order to identify what kinds of institutions and organizations have standing to initiate Environmental Civil Litigation, the second is the developing a new law, to make it clear that which organs and tissues may bring a Environmental Civil Litigation. Unfortunately, the current legislation does not specify which organs and tissues may bring a Environmental Civil Litigation, there is no clear legal formulation for this. Practical difficulties caused by this situation, because the legislation is too vague, resulting in a lack of clear legal expectations of people, such as the relevant body does not know whether they have standing to

initiate Environmental Civil Litigation; it may also cause some legal obstacles, such as certain subject initiate Environmental Civil Litigation , But the district court rejected on the grounds that the plaintiff does not have the statutory qualifications.

B. *Scope of the Case of Environmental Civil Litigation is not Clear*

From the overall coordination of the legislation , We can not put all their hopes in the "Civil Law" Article 55. Because the existing civil law is designed based on the traditional private interest litigation, just by adding a provision to solve all the problems that may result in a lack of coordination with other provisions of the Civil Procedure Law. Such as "Civil Law" Article 3 stipulates that The provisions of this Law shall apply to all the civil litigation accepted by people's courts regarding disputes over the status of property and personal relations among citizens, legal persons, or other organizations respectively and mutually between citizens, legal persons, or other organizations. Clearly, public interest litigation in particular, environmental and public interest litigation can not be included within the scope of this case. In addition, the concept of public interest litigation arising with social development, recognizing its connotation and denotation is a gradual process, and needing to continue to seek consensus in practice, therefore, the provisions of the types of cases should not be too clear and specific, otherwise it will cause obstacles of law enforcement .

C. *Lack of Temporary Rescue Mechanism*

Purpose of Environmental Civil Litigation is to protect the interests of the public environment, Although the legislation has already established a civil public interest litigation system, further loss of environmental pollution during the proceedings would still result in the loss of public environmental interests, Because responsibility is usually only be undertaken after the Judgment is made, pollution damage will be expanded, and sometimes even cause irreparable damage. Public interest can not be

guaranteed, In the process of waiting for the outcome of litigation.

D. Legal Responsibility is not Clear

Nature of Environmental Civil Litigation determines the liability of Environmental Civil Litigation should be diversified, in addition to removal of obstacles, eliminate the danger, restitution, it should also contain the most important form of material compensation, and should be mainly in the form of material compensation. Of course, the matter of compensation for environmental public interest litigation in the civil part of the issue of substantive law rather than procedural law issues, However, from a single, conservative form of compensation, the current liability is not enough to effectively protect the public interest, that is, the current conduct of so-called "Environmental Civil Litigation" is just specious. Difficulties caused by this situation is that the Environmental Civil Litigation can better carry out, extremely mismatch between the cost of investment and litigation results.

E. Lack of Incentives, Resulting in Environmental Public Interest Litigation Useless

Environmental Public Interest Litigation is low, this is an awkward dilemma facing long-term. China's environmental protection in court during the operation, a number of environmental court over a longer period after its establishment, has not received related litigation. Academia and substantive departments mostly attributed the phenomenon to legal restrictions on the eligibility of the plaintiff, and urged the law to relax the plaintiff qualification of public interest litigation. January 1, 2013 implementation of the new "Civil Law" in order to meet the needs of the times, legislators added a public interest litigation provisions in their legislation provisions. The law gives the right to the relevant authorities and related organizations filed public interest litigation against the behavior of harming the public interest, such as: environmental pollution, harming consumers' legitimate rights and interests. This initiative by the media described as "it opens the door for the environmental public interest litigation",

"it makes public interest litigation system in China has taken a big step in the legal system to break the ice." However, the new "Civil Procedure Law" to play today, China's environmental public interest litigation does not appear the phenomenon of people are worried about "frivolous lawsuits", part of the environmental courts never even took any action. New "Civil Law", failed to address this dilemma, the most fundamental reason is that litigation costs. Considering the huge cost of litigation, plaintiffs are often reluctant to bring environmental public interest litigation, which has almost become an insurmountable gap faced by China's environmental public interest litigation, and litigation costs and benefits of investment do not match, the plaintiffs lack of motivation to bring environmental public interest litigation.

F. Unreasonable Distribution of the Burden of Proof

The so-called "burden of proof allocation" refers to when the facts of the case authenticity is unknown, the judge has the right to determine who will bear the adverse legal consequences. The burden of proof distribution system in our law is not scientific and complete. Generally speaking, China's Civil Procedure Law Article 64 is considered to be principled provisions of the "burden of proof distribution system", which is the legal basis on the "who advocates, who the burden of proof." In order to make environmental public interest litigation to proceed smoothly, a reasonable allocation of the burden of proof is very important. In environmental public interest litigation, it can be said against the public interest of polluters and violators are mostly enterprises, corporations or government, they are relatively dominant, they hold a lot of information on environmental litigation and initiative; and the other citizens, groups organizations or other organizations do not have the initiative, they are difficult to obtain favorable evidence, it is difficult to realize their right to appeal. Too harsh for the plaintiff is not conducive to the Environmental Public Interest Litigation.

V. PERFECT VIEWS OF ENVIRONMENTAL CIVIL LITIGATION SYSTEM

For the current Legislation of China's Environmental Civil Litigation and the problems, I propose the following sound advice:

A. *Clear Environmental Civil Litigation Plaintiff Qualification*

Under the "Civil Procedure Law", I believe that the plaintiffs include: Procuratorate , specific administrative organs, social groups and organizations concerned and Individual citizens.

Judging from the nature of the Procuratorate, prosecutors are legal supervisory authority, is neutral and impartial, so by the Prosecution as the plaintiff of environmental public interest litigation in civil , to ensure the effective realization of environmental public interest. Secondly, the Procuratorate has extensive litigation experience, compared to community groups and individual citizens, has more litigation advantage. As a state organ, during the proceedings, prosecutors can use minimize the cost of litigation to mobilize human and material resources to collect some legal evidence that social groups, individual citizens have difficulty to collect.

Environmental administrative organs are suitable as an environmental public interest litigation plaintiff, which is controversial in theory and in practice, but there are still many supporters agree with that environmental administrative organs are suitable as an environmental public interest litigation plaintiff, I also agree with this view. Because environmental administrative authorities with relevant administrative punishment, compared with individual citizens, prosecutors, during the proceedings, it can be more easily collect evidence, save litigation costs. In addition, the environment administrative authority must be limited to prevent abuse of the right to appeal, resulting in the loss of the right to the administrative penalty. Learn from foreign experience in environmental civil public

interest litigation. Before environmental administration to prosecute, first need to fully exercise their right to the administrative penalty. After be punished, people still carry out illegal activities, then environmental administration can sue to court by law to protect the environmental interests of victims. Because social groups with strong social organizational skills, are often able to create a strong social appeal, thus boosting the development of environmental protection, and social groups composed by professionals from all walks of life, for the practice of various problems, both can be resolved quickly and efficiently, which helps smooth environmental Civil Litigation, and to compensate the plaintiff and defendant both information asymmetry defects ,to make the environment public interest get the best safeguard .Although China's current social organization management immature, self-construction is not perfect, but that does not affect civil society organizations as an environmental public interest litigation plaintiff.

Environmental public interest litigation in the United States, has been at the forefront of the world in which citizen suit provisions is one of the highlights. Citizen suit is public interest litigation in the United States, clearly defined in the US federal environmental laws in order to implement the federal environmental law, any person or any citizen may bring a civil action on behalf of themselves, this provision emphasizes anyone may bring an action under citizen environmental citizen suit provisions, the prosecution is not required to have a direct interest in the relationship between the subject and the subject of litigation. Moreover, many of the details of the provisions made in the civic proceedings, including the plaintiff's standing to sue, actionable range, type of litigation and the limitation of citizens of the proceedings, so that the judicial practice has strong operational.

The experience of American citizen suit. To improve citizen environmental public interest litigation, litigation must first clear the status of

individual citizens in the form of law, provide effective legal protection for citizens to bring environmental public interest litigation. Secondly, individual citizens will actively participate in the proceedings, because they are direct victims of environmental damage. So to gradually form a litigation model, is to play a major role of individual citizens, social groups play a supporting role, state organs complementary, to guarantee the full exercise of the litigation rights of citizens, increase environmental awareness of individual citizens. Finally, there must be limits on the right to sue, according to the relevant provisions of the citizen suit, its limits are designed to play a leading role in the executive power, but according to China's realities, limit the right of action designed to prevent frivolous lawsuits. Therefore, restrictions on civil personal appeal, improve judicial efficiency, reduce the burden of the courts.

B. Clear Environmental Civil Public Interest Litigation Cases Range

Increase the range of environmental public interest litigation in civil cases, including the eco-environmental benefits. The interests of public interest litigation lawsuit should go beyond the interests of civil substantive law, and environmental rights included in the Constitution and the Environmental Protection Act . In the scope of protection should include: deforestation, water pollution, air pollution, marine pollution, food contamination, heavy metal pollution, hazardous waste and hazardous chemical pollution, mining, noise, historical and cultural heritage protection. Therefore, in practice, the method to improve the law is: change the single law (such as the "Environmental Protection Law") and increase in judicial interpretation.

C. Innovative Remedies, Establish Temporary Rescue Mechanism

In the "draft" of the first 18 proposed a "preventive responsibility", "For the plaintiff in order to prevent the spread of ecological damage, the

request to stop the infringement, eliminate the danger should be supported by people's court of law ."I think this is an innovative system, but statute only requires the plaintiff may apply, in addition to the court should take the initiative to take temporary relief measures, so you can better reduce the damage caused by pollution. In the civil procedural law, we have a similar system - advance execution, About the case of recourse alimony, alimony, pension and labor compensation case, we can first perform to maintain basic living of the plaintiff. through the court to issue an interim order can be excluded immediately against the public interest, which as a duty of the Court, which for the public interest, timely and effective manner to prevent the expansion of the damage is very necessary,Of course, but also to prevent abuse of the courts, the legislature also need to specify, in what kind of conditions are met when the court can issue interim orders.

D. Refine Environmental Civil Litigation liability

Despite the environmental public interest litigation in the civil liability issue is substantive law rather than procedural law problem, but the problem in Environmental Civil Litigation is still crucial. All setup of the system are in fact in order to resolve the dispute, and the dispute is finally resolved again to take responsibility for the manifestation. Compared to ordinary civil proceedings (for example, compared with the environmental tort litigation), Environmental Civil Litigation special is in fact the plaintiff and to protect the interests of the law is different. Responsibility principle, liability and other forms of legal liability, in fact no different. The key problem is that the amount of compensation of Environmental Civil Litigation in the public interest should be based on the repair and compensation, rather than the private interests of the repair and compensation. Therefore, we recommend our Environmental Civil Litigation material compensation should apply this form of compensation in the amount of compensation can refer to the amount of environmental tort, but to protect private interests which should be converted to the protection of the public interest. In addition,

punitive damages are not a bad idea to reflect the strengthening of punishment to behavior of damaging the public environmental interest, but these questions need to make a clear response through the substantive law.

E. Establish a "bounty hunter" System

"Bounty hunter" means that the person arrest fugitives in order to get a commission. It first emerged in medieval England, and the United States inherited half of the 19th century. That time, the crime rate is high in the United States, but the lack of adequate law enforcement staff. To compensate for lack of public enforcement resources, we had to resort to private to arrest fugitives, and rewards for successfully captured fugitive private. "Bounty hunter" system utilizes the full use of the human nature that is pursued to maximize their own economic interests. In the protection of "bounty hunters" to pursue their own economic interests, to effectively promote the public interest promotion.

"Bounty hunter" system's success, because it is a good incentive for the ordinary citizen, led to everyone's enthusiasm: in the traditional interest litigation, Motivated by personal supervision to punish violations are: the victim to seek damages, which is a personal interest, and therefore incentives of traditional interest litigation is included in the system itself; In the "Bounty Hunter" mode, "bounty hunter" suffered no direct injury, the lack of independent interest of illegal prosecution, and law had to artificially designed in a way, be a bonus as an incentive to arrest fugitives.

Public interest litigation cut off the contact of outcome of the case and the plaintiff. The plaintiff can not obtain a direct economic benefit or other benefits through win a lawsuit, Thus public interest litigation could not have incentives like traditional interest litigation. Because of this, most of the Western countries introduced a "bounty hunter" system in its public interest litigation: In popular in the US "Private Attorney General" litigation, in favor

of the private plaintiff is entitled to full compensation for litigation costs, including attorney fees. As a "private attorney general" personal precisely in order to pursue personal interests, only those who filed the original lawsuit filed impossible; and "bounty hunter" system most similar "penalty proceedings" provides, in favor of the plaintiff may obtain a part of litigation proceeds, which is the plaintiff obvious motive.

F. A Reasonable Allocation of the Burden of Proof

Most countries have adopted the rule of law, "the defendant bear the main burden of proof" or "allocate the burden of proof by the legal elements of responsibility" theory of the burden of proof of public interest litigation in legal practice, Most countries have adopted the rule of law, "the defendant bear the main burden of proof" or "allocate the burden of proof by the legal elements of responsibility" theory, public interest litigation the burden of proof in legal practice, environmental public interest litigation plaintiff bears only the burden of proof in general, and the defendant to bear most of the facts and technical feasibility studies, in line with the characteristics and trends of environmental public interest litigation.

We should distinguish between the burden of proof: still follow the "who advocates, who burden of proof" principle, for general civil cases, which are more in line with our litigation practice; As for the violation of environmental public interest violations, we should take the burden of proof inversion. The plaintiff is obliged to prove the fact that harmful actions have occurred. The remaining items of evidence by the defendant, unless the defendant can prove that he had acted lawfully. Otherwise, the defendant will bear the consequences of damage to the environment public welfare. This is of course increased the responsibility of the accused, but on the country's reality, the strength of civil society groups and individuals in our country is very weak, and the establishment of the Environmental organization group is very difficult, and in limited quantities. Hard to bear heavy responsibility for the main burden of proof, therefore, businesses, factories and government

agencies bear most of the burden of proof is reasonable.

VI. CONCLUSION

In short, the 2012 revision of the Civil Procedure has joined the contents of Environmental Civil Litigation, these provisions only the initial construction of the civil litigation of public interest environment, simple legal provisions still cannot meet the needs of the judicial practice, the need to combine the practice of on the basis of environmental civil public interest litigation as perfect as possible, to make it play its due role.

REFERENCE

- [1] The Supreme Court case on Environmental Civil Litigation case applicable legal interpretation of a number of issues.
- [2] Rong Wuan , Jiao Yan , Tao Liu.Nature Discrimination Environmental Civil Litigation - Environmental Civil Litigation cases in 2007-2012 publicly reported as a sample 6.2013..
- [3] Minfei Li. Research of transnational environmental infringement of private international law. Fudan University Press, 2009.
- [4] Lu Han, Hongkun Sun.Research of plaintiff qualifications of Environmental CivilLitigation .Journal of Hebei Normal University of Science & Technology, (12)2013 : 76.