

Improve the Environmental Public Interest Litigation System and Promote the Construction of a Beautiful China

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Abstract: The revision of the Civil Procedure Law and the enactment of the new Environmental Protection Law have laid the foundation for the development of China's environmental public interest litigation system, which has become an essential part of China's legal system. However, due to the short history of China's environmental public interest litigation system, the lack of systematic legislation and system design and interface mechanisms, the lagging development of relevant procedural rules and judicial practice, all of which are very different from each other, have placed high demands on the construction of China's environmental public interest litigation mechanism. Therefore, this paper proposes to set up pre-trial procedures for environmental public interest litigation and improve the collaboration mechanism for public interest litigation cases, so as to protect the ecological environment and promote the construction of beautiful China.

Keywords: Environmental public interest litigation; System controversy; System improvement

"In order to implement the concept that green water and green mountains are the silver mountain of gold, environmental public interest litigation will be used with high frequency during special historical periods, in line with China's basic national policy." The jurisprudence of environmental public interest litigation can be found on the Judicial Magistrates' Instrument website, such as the "sky-high" environmental public interest litigation case in Taizhou, Jiangsu Province, the series of public interest litigation cases on environmental pollution in the Tengri Desert, and the Green Peacock case in Yunnan Province, etc. A series of major environmental public interest litigation cases can be heard in accordance with the law, which will bring into play the declaratory effect and demonstration significance of environmental public interest litigation and strengthen The public interest litigation system in China

1. China's environmental public interest litigation system provisions are vague

1.1 Controversy over the absence of pre-trial procedural rules

China's Civil Procedure Law has relatively general provisions on pre-trial procedures, which are not given an independent status and are only used as a preparatory link before the court trial, mainly for the service of litigation documents, the court informing the parties of their rights and obligations, and the confirmation of evidence. "These formalised procedural processes are about procedural preparation for the court trial and have no substantive value." The lack of existing legal provisions on the pre-trial procedural environment and pre-trial preparation stage of environmental public interest litigation, and the lack of specific provisions related to what the court should do when it receives an environmental public interest litigation case, what the necessary procedures are, and how to conduct the trial, affects the realisation of the value of the environmental public interest litigation system itself.

This has led to two extreme situations: (1) the pre-trial preparation stage, which takes a lot of time and energy and leads to excessive preparation, and (2) the situation of "setting the trial before the trial and putting the cart before the horse", which makes the trial a mere formality. (2) If the pre-trial preparation phase is too much, it is easy to put the cart before the horse. (2) If the pre-trial preparation is formal or inadequate, the trial process will be inefficient or duplicative. At the same time, in the pre-trial preparation of environmental public interest litigation, the focus of the dispute is not clear and the evidence is not fixed, which will lead to the effect of the trial.

1.2 Misalignment between the function of environmental public interest representative and the function of legal supervision

In the design of China's current environmental administrative public interest litigation system, the procuratorial organs have a dual identity. In terms of jurisprudence, both statuses belong to the state public power organs. On the one hand, the procuratorial organs represent the interests of environmental public interest as plaintiffs in environmental public interest litigation. For example, the Judicial Interpretation of Procuratorial Public Interest Litigation clearly stipulates that procuratorial organs may participate in environmental public interest litigation as representatives of the public interest. On the other hand, the procuratorial organs are also the legal supervision organs of the state. This is reflected in Article 134 of the Constitution, the Administrative Penalties Law and other relevant laws and regulations, including Article 25(4) of the Administrative Litigation Law, which states that: "When a people's procuratorate, in the course of performing its duties, finds that an administrative organ with supervisory and administrative responsibilities in the field of ecological environment and resource protection has exercised its powers illegally or failed to act, it shall make procuratorial recommendations to the administrative organ to urge them to perform their duties in accordance with the law." It is not difficult to see that the administrative public interest litigation initiated by Chinese procuratorial organs has the dual attributes of a legal supervisory organ and a public interest representative.

In fact, there is a misalignment between the procuratorial authorities' protection of environmental public interests. The administrative organs report to the procuratorial authorities on the implementation of procuratorial recommendations, etc., and the process of environmental procuratorial supervision ends after the administrative organs impose administrative penalties on the parties in accordance with the law. Some local procuratorial authorities will give full consideration to ecological and environmental damage and repair, and finally require the administrative authorities to repair the ecological environment and make administrative penalties with a time limit, which cannot be rectified within the prescribed period, and must be reported to the procuratorial authorities in writing and put forward a written deadline for rectification. However, if the focus is only on legal supervision as a means of attaching a rectification programme and implementing environmental procuratorial supervision, it often stops at the administrative organ reporting to the procuratorial organ on the completion of the implementation of the procuratorial recommendations. In practice, the procuratorial authorities do not have a dual function to play a greater value, and the Supreme People's Procuratorate has launched procuratorial supervision "look back" activities and special campaigns "look back" in order to strengthen the effectiveness of procuratorial supervision, in order to achieve a regular, standardised The role of the procuratorate in achieving the goal of comprehensive protection of environmental public goods is extremely limited. As the procuratorial authorities focus on the effectiveness of enforcement in a particular case, rather than acting as representatives of the environmental public interest, they follow the facts regarding environmental damage or potential environmental damage. As a result, there is a confusing mix of functions as a representative of environmental public interest litigation and as a subject of legal oversight.

2. The path to improve the environmental public interest litigation system in China

2.1 Set up environmental public interest litigation pre-trial procedures

The difficulties in proving the evidence may lead to several court sessions and reduce the efficiency of litigation.

In this context, pre-trial procedures for environmental civil public interest litigation should be set up creatively. The pre-trial procedure is a procedure developed by the people's court to correspond to the actual needs in the trial work, and it is specially formulated in order to guarantee the effective exercise of trial power in accordance with the law. Regarding the pre-trial procedure, it is arranged and presided over by the court, and the two parties mainly do the following two things: Firstly, the dispute between the parties is summarised and collated, and the focus of the dispute between the two parties is clarified. The second is to exchange and collate the evidence provided by both parties. Through these two aspects, it is possible to make the environmental civil public interest litigation more scientific and effective. In the case of environmental public interest litigation, the evidentiary material is complicated and may involve highly specialized identification issues. In order to avoid inconsistent adjudication results and wasted resources, it should be treated as a preparatory exercise before the court hearing. The court should establish pre-trial procedures under the auspices of the court, so that the parties can fully communicate and sort out the evidence they hold, so as to avoid evidence raids during the trial, and to safeguard the interests of the public environment in the interests of fairness and justice.

2.2 Improve the collaboration mechanism for public interest litigation cases

Firstly, a communication and collaboration mechanism for sharing clues between the procuratorial authorities and social organisations should be established. The procuratorate can effectively play a large enough supervisory role and has the advantage of investigating and collecting evidence, etc. Similarly, social organizations and folk can capture clues about environmental public

interest litigation and they are highly motivated to do so. By mutually establishing a mechanism for sharing clues and communicating and collaborating, the procuratorate and social organizations can play their respective advantages in public interest litigation, further clarify the procedures for social organizations to participate in environmental civil public interest litigation and improve The public prosecutor's office should support the relevant provisions of the lawsuit.

Secondly, the ecological and environmental administrative departments have a good professional foundation, complete law enforcement tools, various means of law enforcement, and mature law enforcement techniques, which gives them an advantage in terms of information on environmental violations and the collection and analysis of relevant evidence.

Finally, the court can build a long-term communication mechanism with social organisations, organise frequent talks and training activities, make use of the court's case resources and rich trial experience, etc., issue typical cases and strengthen publicity, and work with relevant administrative units to improve the professional level of social organisations in analysing and responding to environmental issues, etc. This will enable the judiciary and social organisations to work together to focus on environmental public interest litigation, rather than the procuratorial authorities mixing their functions and having an unclear legal relationship.

Given that the construction of ecological civilization requires the coordinated and unified role of multiple state agencies, social groups and individuals to achieve comprehensive protection of the public interest in the environment and to mobilize the strength of multiple parties to form a synergy for environmental protection and jointly promote the construction of a beautiful China.

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