

On the Sequence Design and Construction of the Subject of Environmental Civil Public Interest Litigation

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Abstract: The suitability of the subject of the environmental civil public interest litigation serves as the basis of the design of the sequence of the subject of the lawsuit, and the rationality of the sequence of the subject of the lawsuit is the key to the best maintenance of public interest. Based on the inspiration of foreign systems and the discussion on opinions by scholars, the environmental civil public interest litigation is divided into two stages: subrogation litigation and damage compensation litigation. Besides, the reasonable design of the order of the subject of the lawsuit is achieved in the two stages. In the litigation of subrogation, the environmental protection organization ranks the first followed by the individual citizen in the second place, and the last place goes to the procuratorial organ. In the lawsuit of damage compensation, the environmental protection based administrative organ is the first and the only subject. The subjects of each sequence complement and cooperate with each other to safeguard environmental public interests.

Keywords: environmental civil public interest litigation, suitable litigation subject, sequence design, subrogation litigation, damage compensation litigation

Introduction

As the rapid development of China's economy, the problem of environmental pollution has become more and more prominent, which has seriously affected the sustainable development of the society. Therefore, "environmental public interest litigation" arisen at the historic moment and becomes the focus of the society, the government and the citizens. However, since the implementation of the system in 2015, environmental public interest litigation failed to show its vigor and vitality as expected, rather it suffered severe recession. The establishment of this system failed to satisfy psychological expectations of people in environmental protection. In the process of practice, environmental public interest litigation has found a series of problems, such as: the qualification positioning of the subject of the lawsuit is vague, the relationship between the eligible subjects cannot be clear, the order is not clear, and the order is not clear, which in turn leads to the overlap and confrontation of the rights or powers of various subjects, or the laziness of the eligible subjects in exercising the right to sue. These problems make public interest litigation practice more difficult, and if not solved, this system with an ideal blueprint may eventually find it difficult to escape the situation of "idle". Based on the author's opinion, the rationality of the design of the subject of the environmental public interest litigation is the key to providing solutions to difficulties of this system. There are two types of environmental public interest litigation, one is environmental civil public interest litigation, the other is environmental administrative public interest litigation, and there are huge differences between the two types in practice. Researches were conducted on the order of the subject of the prosecution of environmental civil public interest litigation due to the limited space and emphasis of the author.

1. The scope of the subject of prosecution — the basis of sequence design

The determination of the scope of the subject of environmental civil public interest litigation is the basis of the design of the sequence of the subject of the lawsuit. "Which are the eligible subjects?", is an issue that is still being discussed in legal circles. Through relevant laws, China has made unified definition on the qualifications of environmental social organizations and procuratorial organs for prosecution, and environmental social organizations that meet certain conditions are regarded as eligible subjects for prosecution. The procuratorial organs participated in environmental civil public interest litigation as the subjects of prosecution in a pilot way.[1] On the basis of these two, the litigants of environmental civil public interest litigation should also include environmental protection administrative organs and individual citizens.

1.1 Environmental and social organizations

The main feature of environmental protection based social organizations is characterized with the public interest in

purpose, and the motivation of their establishment is to protect citizens to enjoy the environment with reasonable use of the environment. Secondly, the organization constitutes a large number of talents with professional knowledge of environmental protection. Compared with other bodies, professionalism and specialization are a major advantage. In addition, from the very beginning of their establishment, environmental protection organizations have been independent of judicial and administrative organs, which belong to non-governmental organizations that are born with a good mass base. Finally, in the process of participating in litigation, environmental protection organizations can communicate more conveniently with the people and maintain more neutrality in public power.

1.2 Procuratorial organs

In light of legal principle, the procuratorial organ is established based on the theory of public trust and the theory of formal parties. In practice, after the implementation measures were introduced, procuratorial organs participated in a considerable number of environmental civil public interest litigation cases, which jointly proved the correctness of procuratorial organs as eligible subjects of prosecution. Compared with environmental social organizations, procuratorial organs enjoy a broader coverage and sufficient authority to represent public interests in a wider range. The procuratorial organ has a natural advantage in bringing a lawsuit, which is capable of coordinating the litigation of both parties in a sound manner. In the defense with the environmental polluter, it will not fall into a disadvantageous position because of the strength of the other party.

1.3 Individual citizen

With the awakening of citizens' awareness of "environmental rights" in recent years, individual citizens have paid more and more attention to public interest litigation, and it is increasingly unacceptable to exclude individual citizens from qualified subjects for prosecution. The environmental civil public interest litigation gives priority to the public interest. The individual citizen is the direct victim of the public interest, and the direct damage of many citizens constitutes the public interest damage. When environmental rights and interests of citizen are infringed, citizens are empowered with the right to Sue, so that they can participate in litigation as those who have a direct interest in the case. As the direct victims of environmental pollution, citizens can have a better understanding of the relationship between the environment and human existence, indicating a greater enthusiasm in engagement of public interest litigation[2].

1.4 Environmental protection based governmental agencies

The topic of whether environmental protection government agencies can be the subject of prosecution of environmental civil public interest litigation has been in a fierce debate in academic circles. Opposing scholars believe that the environmental protection government agency itself is an administrative organ that takes environmental protection as its own responsibility, and if it is re-qualified to sue, it will lead to excessive concentration of power, affect the independence of the judiciary, and find a way to transfer responsibility for its negligence in performing administrative responsibilities. "It is imperative for the governments to become the subject of environmental civil public interest litigation"[3]. The most important and core environmental protection agencies will be marginalized and isolated after environmental protection government agencies are excluded from the subject of the lawsuit, thus minimize the role of the most important agencies. Apparently, this is a contradiction. To bestow environmental protection government agencies the qualification to Sue, it doesn't mean that the subject is allowed to escape responsibility, rather it is more about their responsibilities to make up for the shortcomings of enforcement law in environmental protection. From another perspective, public interest litigation gives emphasis on public interest, and the government should and must be the best representatives for public interest.

2. "Two-stage" proceeding of environmental civil public interest litigation — The key to the design of the sequence of the subject of the lawsuit

2.1 How to understand the "two-stage" approach to environmental civil public interest litigation

"Two-stage" proceeding of environmental civil public interest litigation means that the environmental civil public interest litigation will be divided into two stages: one refers to the stage in "subrogation litigation", the other is the stage in "damage compensation litigation". Subrogation and damages are not two novel terms, they are both detailed in civil law. The ultimate goal of civil environmental public interest litigation is public interest. However, two objectives should be achieved in actual operation, that is, one objective is to determine the damage responsibility, that is, to determine the fact of pollution behavior. The other purpose is to demand compensation for damages, that is, to require the person responsible for the damage to control the pollution results or pay the costs related to environmental restoration and treatment. The current environmental civil public interest litigation is the embodiment of these two objectives as one in the whole at large,

which will lead to confusion of litigation claims and overlapping and conflict among eligible litigants. The prerequisite is to determine the person responsible for the damage. However, it proves to be with the most difficulty, on most occasions, in subsequent environmental restoration and treatment. Dividing environmental civil public interest litigation into two stages is conducive to clarifying the order and mutual relationship between the subjects of the lawsuit.

Subrogation litigation was coined for the deficiency in law enforcement of the governments for environmental protection or lack of corresponding power. When environmental government agencies fail to actively perform their duties to stop and punish environmental polluters, social organizations for environmental protection, citizens and procuratorates will file lawsuits against polluters. In this lawsuit, the request raised accordingly covers the call to determine the illegality of the polluter's behavior and to stop its pollution behavior, rather than the request in property. Besides, the verdict made by the court can be implemented based on the standard in conducts rectification. The damage compensation litigation is established for its high cost in environmental restoration and the principle of "whoever polluting the environment will take charge in restoration". Under normal circumstances, it takes exorbitant cost, and the amount of administrative penalty is prescribed by law, the amount of administrative penalty is far from reaching the requirements of cost for realistic restoration, which put requirements for environmental agencies in environmental protection to seek compensation from polluters through environmental civil public interest litigation. The court's decision then revolves only around "damages", and the polluter's actions and liability have been determined at the previous stage. In another word, the verdict of the court is made only based on compensations for damages. The behaviour and responsibility of the polluter has been determined at the previous stage.

The idea that environmental civil public interest litigation can be divided into two stages of subrogation and damage compensation is demonstrated not the one to be initially put forwarded. The practice of this idea can be found in the United States and civil law systems. The United States divides environmental civil public interest litigation into environmental citizen litigation and natural resource damages litigation. In the former, the scope of the plaintiff is given broaden connotation to refer to "anyone", while the form of lawsuit request and liability is limited to the civil penalty of prohibition and fine for the behavior correction.[4] The latter, for the purpose of ecological restoration, pursues the responsibility for filling the damage not involved in the former. The plaintiff is the federal environmental resource agency, state government and other government entities as the "trustee".[5]

2.2 The imperatives of "two-stage" based processing of environmental civil public interest litigation

First of all, there is confusion between eligible litigants and public representatives. As the initiator of environmental civil public interest litigation, being able to represent the public interest to the greatest extent is one of the conditions for obtaining identity. When the government has carried out systematic treatment and restoration of the polluted environment, social organizations for environmental protection or procuratorates still make requests for restoration of the environment or compensation for environmental restoration damage. How can there not be a confrontation between the subject of the prosecution? In this case, who is the best defender of the public good?

Secondly, the relationship between eligible subjects of prosecution is in a mess. As stated in the previous article, government agencies for environmental protection, social organizations, procuratorial organs and individual citizens can all be eligible as the prosecution subjects of environmental civil public interest litigation, and these subjects have the right to Sue. So we need to think about a couple of questions, who has the precedence in Sue? Is the right to Sue the same for each subject? Can their claims include the same content? If we rely only on "who best represents the public good" and the preemption of time, then the confusion between them is difficult to sort out. The author thinks that only by putting them into the stage of subrogation litigation and damages litigation, can we make full use of their respective advantages and clarify their order.

Finally, the attribution of compensation funds requested by environmental civil public interest litigation has been confused. Local finance is managed by the government, accounts designated by the court are used at its disposal, special accounts for environmental protection are managed and used by environmental protection departments, and public welfare funds are used by environmental organizations. All these have their advantages and disadvantages.[6] Considering the different situations of various institutions and organizations and the huge systematic project of environmental restoration and governance, the final compensation funds are mostly controlled and used by relevant government agencies. The practical operation of civil law is that the plaintiff of the subject of rights obtains the right to use and control the funds of damages compensation through litigation, but in reality the environmental civil public interest litigation often violates this tradition. Why is it that a prosecutor is able to litigate on behalf of the public interest, but the damages he receives have nothing to do with him? When this happens, it can only be clarified in two paragraphs of environmental civil public interest litigation.

3. The construction of environmental civil public interest litigation subject sequence design

On the basis of establishing the scope of the subject of environmental civil public interest litigation and fully understanding the "two-stage" environmental civil public interest litigation, the design of the subject of the lawsuit is finally carried out. The main thrust of our clarity is that the various eligible prosecution subjects are not antagonistic and conflict-oriented, but mutually cooperative and complementary.

It has been proposed that civil environmental public interest litigation can be divided into subrogation litigation and damage compensation litigation. In the subrogation litigation, the environmental administrative authorities are the subrogation authority, and the environmental social organizations, individual citizens and procuratorial organs are the subrogation authority. When the administrative authorities for environmental protection fail to fully perform their duties for some actions that cause pollution of environment, other subjects should file civil environmental public interest lawsuits against such actions. In the litigation of subrogation, social environmental organizations should be regarded as the first litigant, citizens as the second litigant, procuratorial organs as the third litigant, and administrative organs for environmental protection should be excluded. The reason for modern litigation is the absence of environmental protection administrative organs and the imperfection of administration.

The purpose of subrogation litigation is to merely determine the legal liability of polluters and to stop pollution behaviors. In this way, the directness, initiative and quick response of environmental protection social organizations and individual citizens should be fully brought into play, and the passivity and retardation of procuratorial organs should be made up. In this process, the inclusion of individual citizens and environmental social organizations as the first and second litigants has also greatly increased the participation and enthusiasm of non-public officials in environmental protection. Organizations for environmental protection rank ahead of citizens because, compared with citizens, the organizations enjoys more advantages in professional personnel, technology and accuracy of evidence collection. Among them, the procuratorate, as a public authority, mainly reviews and supports the litigants in the first two order, so as to maintain the maximum public character.

In the stage of the damages lawsuit, the administrative authority for environmental protection is undoubtedly the subject of the first order of prosecution, which is regarded as the only subject. The Environmental public interest litigation system of Germany also involves relevant provisions, based on which, non-governmental entities are not allowed to claim damages from polluters. If the relevant administrative agencies fail to fulfill this obligation, other entities can Sue the administrative agencies that are responsible for environmental protection. In the final analysis, environmental remediation is a very complex project. Organizations for environmental protection and individuals are destitute of resources, while procuratorates are strong in will but weak in power. Administrative agencies for environmental protection are the best option. The huge amount of funds obtained from the recovery of damages is ultimately controlled by the environmental protection government agencies. If other litigants are involved in the damage compensation lawsuit, the ownership of the compensation won will be confused.

For example, in the "Friends of Nature, Green Development Association v. Changlong Chemical, Changyu Chemical, Huada Chemical Polluted Land Case" (hereinafter referred to as the "Changzhou Poisoned Land Case"), in the process of the government's restoration and management of the polluted land, environmental protection social organizations launched environmental civil public interest lawsuits against the three chemical plants of Changlong, Changyu and Huada, and proposed that the three defendants publicly apologize for their polluting behavior, restore the environment of the original factory site and bear the costs, and bear the litigation costs, on the basis of the rejection of the first instance. The second-instance trial finally found that the defendant should bear the legal fees and publicly apologized for its pollution behavior, and rejected other requests from environmental protection social organizations. In this case, it is obvious that the government and environmental protection social organizations overlap and antagonize each other, and the final court's ruling just echoes the two-stage treatment of environmental civil public interest litigation. In this typical environmental civil public interest litigation is divided into two stages: subrogation litigation and damage compensation litigation, in the subrogation litigation, the environmental protection social organization as the first subject of the lawsuit, it only requires confirmation of the responsibility of the polluter, then its request for the chemical plant to publicly apologize for the pollution behavior and bear the litigation costs, of course, it is supported. In the damages lawsuit, the relevant government agencies sue the polluter and demand that the original factory site be restored to its original state or bear the cost of restoration. In this way, the purpose of confirming the illegal behavior of the chemical plant and supporting the government to restore governance is achieved, and the public welfare is optimally maintained.

Conclusion

At present, China's environmental civil public interest litigation system is still in the exploratory period. In the current law, only environmental social organizations and procuratorates are given a clear position as the subject of the lawsuit, and the order of the lawsuit between the subject fails to be clearly defined. The author hopes to provide some help or inspiration to improve the actual system by studying the subject sequence of environmental civil public interest litigation.

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