

Brief Analysis of the Eligibility of Administrative Organs' Plaintiff Qualification on Environmental Public Interest Litigation

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Abstract: The plaintiff qualification on environmental public interest litigation is restricted unduly and narrowly. As the only legal and eligible subject, social groups greatly limit the development of environmental public interest litigation.

1. Introduction

Through clarifying the status quo of enforcement to environmental public interest litigation by administrative organs, this paper analyzes the eligibility of the plaintiff qualification on environmental public interest litigation of administrative organs, and finally designs the eligible system of it.[1-10] Thereby enriching the content of environmental public interest litigation, and thus achieving the systematic development of environmental public litigation.

2. The Status Quo of Enforcement to Environmental Public Interest Litigation by Administrative Organs

2.1 Limitation of Scope of Environmental Supervision Authority

Although the environment departments have the legitimate authority to execute unified supervision and management of environmental protection, there is no specific condemnatory right when it comes to certain special fields and individual affairs.[11-15] For example, to the problem of urban glare pollution, the environment departments have no supervision and management authority granted by legislation.[16] According to the principle of public authority allocation of “law without authorization is prohibition”, the environment departments have no right to intervene with city glare pollution and light nuisance.

2.2 Limitations of Environmental Law Enforcement Launch Conditions

Although the environment departments have many administrative functions such as the power of examination and approval of EIA(environmental impact assessment)documents, administrative orders for treatment within a prescribed time limit, administrative punishments and so on, the law usually stipulates the conditions for the launch of power in order to control the excessive expansion and arbitrary exercise of power. For example, construction projects with minor environmental impacts (such as retail farming) do not need to start an environmental impact assessment system. For another example, the government or the environment department can order it to treat within a prescribed time limit or close only if the construction project exceeds the emission standard or violates the total amount control.

2.3 Limitations of Insufficient Environmental Law Enforcement Means and Powers

According to the current legislation, the usual means of environmental law enforcement are administrative licensing, administrative orders (such as ordering treatment within a prescribed time limit), administrative penalties and so on, there is still a lack of compulsory administrative power(coercion) such as sealing up, distraining, and freezing, and there is no administrative enforcement power. That is to say, for environmentally illegal enterprises, the environment departments can not only seal it up, even if the environment departments have made administrative

decisions such as deadline treatment and administrative punishment, they can only apply to the court for enforcement if the administrative counterpart (pollution enterprise) refuses to perform. However the effectiveness of the court's implementation is worrying. This "law enforcement failure" invisibly breeds and fuels the arrogance of enterprise illegal pollution discharge.

3. The Analysis of the Eligibility of Administrative Organs' Plaintiff Qualification on Environmental Public Interest Litigation

3.1 The Plaintiff's Eligibility System of the Administrative Organs is a Supplement to the Loopholes of Administrative Authority

Environmental administrative organs are often constrained by many limitations in the process of administrative law enforcement. For instance, although an administrative organ may handle environmental disputes on application, it scarcely intervene in disputes actively, even more it is not allowed to order the counterpart to undertake civil liability for environmental restoration. For enterprises that violate environmental laws, the environment departments can only investigate their administrative illegal liabilities, such as ordering the suspension of production, business, and imposing fines. Nevertheless, they have no right to use administrative power for environmental damage caused by enterprises, ordering it to take responsibility for removal of obstacles, elimination of dangers, restoration of environment and compensation of damages.

3.2. The Theoretical Legitimacy of Administrative Organs' Plaintiff Qualification on the Environmental Public Interest Litigation

A law adage says, "there is no right without relief". When the environmental rights are violated or endangered, the law which is the safeguard of justice should grant people the right to relief. However, in view of the integrality, mobility, connectivity and other attributes of the environment, environmental rights have typical publicity and weak self-interest. Therefore, most of the citizens are reluctant to filed a lawsuit first on the public environment violation out of the "free rider" mentality. As a result, when environmental pollution and damage occur, it is more likely to occur the absence of prosecutor or reluctance of prosecution, especially when there is no private personal and property damage (such as marine oil pollution). At this time, in order to effectively protect the public environment, citizens have entrusted part of the right to the state, which is called litigation trust. However, as an abstract subject of many organs, the state cannot appear in court to sue and respond, so it assigns this task to specific state organs, which initiate legal proceedings on behalf of the state.

3.3 The practical feasibility of administrative organs' plaintiff qualification on environmental public interest litigation

At the national legislative level, as stipulated in Article 5 of the Marine Environmental Protection Law of 1999, the departments exercising supervision and management authority in marine environment mainly include the environmental administration, the marine administration, the maritime administration, and the fishery administration. And other departments, that is, they can all be plaintiffs to file civil public interest litigation on marine environment.

At the local level, such as the "Trial Regulations on Handling Environmental Civil Public Interest Litigation Cases" jointly formulated by the Wuxi Intermediate People's Court and the Wuxi Municipal People's Procuratorate in 2008, and the "Regulations on Environmental Protection Trial Court Cases" formulated by the Wuxi Intermediate People's Court Environmental Court. They all have confirmed the legal status of the environment department as the plaintiff to raise environmental public interest litigation.

4. The System Design of Eligibility of Administrative Organs' Plaintiff Qualification on Environmental public interest litigation

4.1 Introduction of Environmental Public Interest Litigation Pre-procedures

The legal status of the environmental administrative organ is the state administrative organ, which has the statutory duty to conduct environmental supervision. If the administrative organ is remiss in obligation and causes environmental public interest damages, the citizen can choose either the direct environmental victim (such as a polluting enterprise) or the environment department as the defendant to file an civil or administrative public interest litigation. In other words, when the environmental administrative organs perform its duties improperly or improperly, they can not only act as the plaintiff, but may also be sued as a defendant. Therefore, it is necessary to set preconditions for the environmental administrative organs to initiate environmental public interest litigation, that is, they must have fulfilled relevant political duties according to law.

4.2 The Establishment of a Strict Prosecution Review System for Plaintiff Qualifications

In order to make a scientific design of the environmental lawsuit filed by the environmental administrative organ as the plaintiff, it is necessary to accurately understand the types of environmental public interest, and then reasonably limit the scope of public interest litigation. According to the different rights foundation and the characteristics of interest attributes, we can divide environmental public interest into two basic types: publicity environmental public interest and commonality environmental public interest. The first is shared by uncertain majority and is composed of the personal and property interests on condition of good environment. The second takes the public service function of the environment as the content.

4.3 The Creation of a Division System for the Status of Environmental Public Interest Litigation in Administrative Organs

4.3.1 Common plaintiff system

First of all, the environment department can file environmental litigation jointly with citizens and legal persons. At this time, the claims of the environment department point to environmental public interest, while citizens and legal persons point to environmental private interests.

Secondly, after citizens, legal persons, environmental organizations, etc. file environmental private interests litigation (through relief personal rights, property rights and private environmental rights and interests), the environment department believes that the case may involve publicity environmental public interest can apply to join the lawsuit as the plaintiff of the public interest representative. (or use the prosecution system to directly support the plaintiff's claim for maintaining environmental public interest).

Finally, if the court believes that the case involves "damage to the public environment itself" and needs to be safeguarded, it can also notify the environment department to participate in the lawsuit as a plaintiff based on the principle of "judicial activism".

4.3.2 Independent Plaintiff System

Only when the public environmental public interest is damaged (just environment rather than including private individuals and property), the prosecution subject is missing (no one living in this area and claiming environmental rights) or not willing to prosecute (enjoy the environment right but is not willing to sue for the "free rider" mentality) or the public raise a claim, the environment department should take the initiative as the plaintiff and independently file an environmental public interest litigation. In addition, for civil cases involving environmental violations, the environment department has performed its duties such as administrative punishment, but the environmental damage caused by the violation has not been dealt with, then the procuratorial organs can urge relevant environment department to prosecute and produced the Civil Prosecution Indictment to supervise its prosecution. Environmental rights holders and other public members can also request the procuratorial organs to urge the environment departments to sue.

5. Conclusion

As a statutory environmental supervision agency and plaintiff, the administrative organ file an environmental civil public interest litigation, which has theoretical and practical legitimacy, and also has the feasibility of ability, status, experience and national conditions. In environmental justice practice, the environment department can also take on different roles of the common plaintiff and the independent plaintiff. At present, it is necessary to provide fair and timely relief to the vulnerable groups suffering from environmental damage, and support victims and civil environmental organizations to bring environmental private and public interest litigation, aiming at safeguarding personal and property interests. These are the main tasks of the environment department to participate in environmental justice work.

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