

The Procedural Rules of Environmental Administrative Public Interest Litigation Have Been Improved

Xingyu Wang

School of Law Anhui University of Finance and Economics, Bengbu, China

Abstract

Environmental administrative public interest litigation plays an important role in promoting the construction of modern environmental governance system and enhancing the ability of ecological environmental protection and governance. However, since the formal establishment of environmental administrative public interest litigation system is relatively late, it is still in the exploratory stage. Therefore, in practice, the main body of environmental administrative public interest litigation is too simple, the judgment criteria for the commencement of litigation proceedings are controversial, and the consultation mechanism in the pre-litigation procedure is not perfect. Based on the fundamental position of ecological protection, considering the particularity of environmental damage and combining with some typical environmental administrative public interest litigation cases, it is proposed to improve the procedural rules of environmental administrative public interest litigation by appropriately expanding the scope of litigation subjects, taking behavioral standards as the judgment criteria for performing duties according to law, and strengthening the consultation provisions of both parties in pre-litigation procedures.

Keywords

Environmental Administrative Public Interest Litigation, Performance Standards; Social Good.

1. Implementation status of environmental administrative public interest litigation system

Environmental public interest litigation system has always been the focus of public interest litigation in our country because of its characteristics of large number of cases, good implementation effect and many theoretical studies. According to the different objects of litigation, it is divided into environmental administrative public interest litigation and environmental civil public interest litigation. Compared with the latter, the establishment and development time of environmental administrative public interest litigation in China is relatively short, and the system construction is not perfect. In this context, it is necessary to study the new public interest litigation type of environmental administrative public interest litigation and improve the system of environmental administrative public interest litigation.

Environmental administrative public interest litigation refers to the litigation mode in the field of ecological environment and resource protection, which takes administrative organs as litigation objects and people's procuratorates initiate litigation. Compared with the traditional litigation, the object, object and subject of the litigation in the environmental administrative public interest litigation system are clearly defined by law.

1.1. The emergence and development of the environmental administrative public interest litigation system

In 2015, the Decision on authorizing the Supreme People's Procuratorate to carry out pilot work of public interest litigation in some areas mentioned for the first time that procuratorial

organs bring environmental public interest litigation. With the end of the pilot, the Administrative Procedure Law was amended in 2017, and the environmental administrative public interest litigation system was formally established. In July 2021, the Supreme People's Procuratorate promulgated and implemented the litigation rules for public interest litigation of procuratorial organs stipulated in the Rules for Handling Public Interest Litigation of People's Procuratorates. At this point, the framework of our country's environmental administrative public interest litigation system was basically determined. From the formal establishment of the system in 2017 to the elaboration of the rules in 2021, China's administrative public interest litigation system has always been in the exploration stage, which needs theoretical guidance and urgent improvement in legal norms.

1.2. Judicial status of environmental administrative public interest litigation

According to the data in the White paper "China's Environmental and Resource Trials" over the years, courts across the country accepted 1,737 environmental public interest litigation cases filed by procuratorial organs in 2018. Among them, 113 environmental civil public interest litigation cases; 376 environmental administrative public interest litigation cases; In 2019, a total of 2,309 environmental public interest lawsuits filed by procuratorial organs were accepted, including 355 environmental administrative public interest litigation cases. In 2021, a total of 5,610 environmental public interest lawsuits filed by procuratorial organs were accepted, including 612 environmental administrative public interest litigation cases.

On the other hand, according to the White Paper on Public Interest Litigation Procuratorial Work published in 2024, a total of 189,885 public interest litigation cases will be filed in 2023. Handled 167,776 administrative public interest litigation cases, of which 116,489 were pre-litigation procuratorial suggestions. Procuratorial organs filed 12,579 public interest lawsuits. Among them, 11,303 civil public interest lawsuits were filed (including 8,654 civil public interest lawsuits attached to criminal cases), accounting for 89.9% of the total number of prosecutions. A total of 1,276 administrative public interest lawsuits were filed, accounting for 10.1% of the total prosecutions, up 76.7% year-on-year in 2022. (See Figure 2 for details). Combined with the typical cases and guiding cases released in recent years, the current judicial status of environmental administrative public interest litigation in our country has the following characteristics: First, the number of litigation cases has always been on the rise. Second, the pre-litigation procedure plays an important role in the handling of environmental administrative public interest litigation cases.

On the other hand, according to the White Paper on Public Interest Litigation Procuratorial Work published in 2024, a total of 189,885 public interest litigation cases will be filed in 2023. Handled 167,776 administrative public interest litigation cases, of which 116,489 were pre-litigation procuratorial suggestions. Procuratorial organs filed 12,579 public interest lawsuits. Among them, 11,303 civil public interest lawsuits were filed (including 8,654 civil public interest lawsuits attached to criminal cases), accounting for 89.9% of the total number of prosecutions. A total of 1,276 administrative public interest lawsuits were filed, accounting for 10.1% of the total prosecutions, up 76.7% year-on-year in 2022. Combined with the typical cases and guiding cases released in recent years, the current judicial status of environmental administrative public interest litigation in our country has the following characteristics: First, the number of litigation cases has always been on the rise. Second, the pre-litigation procedure plays an important role in the handling of environmental administrative public interest litigation cases.

2. Problems in environmental administrative public interest litigation

2.1. The subject of prosecution in the proceedings is too single

As a kind of public interest litigation, environmental administrative public interest litigation is different from environmental civil public interest litigation in that the main body of the litigation is different. The main body of environmental civil public interest litigation includes both procuratorial organs and social organizations. However, the prosecution of environmental administrative public interest litigation is only limited to the procuratorial organs, and the excessively single prosecution subject leads to the lack of the scope of clues in the case, which makes it difficult for the procuratorial organs to investigate and obtain evidence. As shown in the above-mentioned White Papers on Public Interest Litigation, the number of environmental administrative public interest litigation cases is on the rise, and too many cases have increased the work intensity of the procuratorial organs. Proper responsibility assignment can effectively solve the judicial situation of too many cases. It is undeniable that procuratorial organs, as the main body of environmental administrative public interest litigation, have played a good role in promoting environmental administrative organs to perform their duties according to law, correcting environmental administrative violations, and safeguarding environmental national interests and social public interests.[1] However, the main work center of procuratorial organs has always been criminal litigation, and public interest litigation is not the focus of work. On the other hand, there are deviations in the litigation concept of the staff of the procuratorial organs. In the face of resistance and difficulties, some procuratorial personnel are afraid of difficulties and hold a wait-and-see attitude, and even choose cases that are less difficult to litigate. It is too simple to limit the prosecution to the prosecution, which is not conducive to the realization of the legislative purpose.

2.2. There are disputes over the criteria for the commencement of proceedings

Article 81 of the Rules for Handling public Interest Litigation of the People's Procuratorates clearly stipulates that "If an administrative organ fails to perform its duties according to law after being urged and urged by the procurator, and the national interests or social public interests are infringed, the people's Procuratorate shall initiate administrative public interest litigation according to law." The regulation takes the administrative organ's failure to perform its duties in accordance with the law as a prerequisite for the procuratorial organ to initiate a lawsuit, that is, the procuratorial suggestion and negligence in performing their duties as the starting criteria of the litigation procedure. Whether the procuratorial recommendations are communicated is convenient for judgment, but whether there is a judgment standard for performing duties according to law is controversial. In view of the judgment criteria of administrative organs performing their duties according to law in environmental administrative public interest litigation, there are three main theories: result standard, behavior standard and compound standard. [2]

The standard of conduct refers to the administrative acts implemented by administrative organs as the judgment criteria for performing their duties, also known as "exhaustive theory", which refers to whether the administrative organs have exhausted all means to avoid the phenomenon of ecological environment damage, and if they have exhausted all means, they are considered to have performed their duties according to law. Scholars who hold this view mainly believe that, due to the special object of environmental rights and interests, environmental violations have the characteristics of strong persistence and high secrecy, and it is too one-sided to only consider whether the behavior of environmental damage should be stopped, and administrative organs also have the duty to restore the original environment[4]. For example, in the "Taobei District People's Procuratorate v. Taobei Forestry and Grassland Bureau (hereinafter referred to as Taobei Forestry and Grassland Bureau) administrative public

interest litigation case", the Taobei Forestry and Grassland Bureau has issued the "Notice of Ordering the restoration of grassland status" and ordered the responsible person to stop farming behavior, and can restore grassland resources through the function of natural restoration, and has fulfilled its duties according to law. The Taobei District People's Procuratorate believes that natural restoration measures can not effectively restore the damaged grassland resources, the forest and grass Bureau should draft the "grassland restoration three-year draft" and other similar means to speed up the recovery of environmental resources, and thus judged that it failed to perform its duties in accordance with the law and filed a lawsuit. The standard of conduct that requires the administrative body to exhaust all means is too strict and is criticized by the administrative organs. On the other hand, the procuratorial organ, as a supervisory organ, has a high difficulty in verifying whether the administrative subject has exhausted all means, which consumes judicial resources.

The result standard is whether the effect of environmental public welfare protection is achieved as the judgment criterion for performing duties, also known as the "effect theory", which refers to whether the administrative behavior of the administrative organ has stopped the infringement of the administrative counterpart and whether the ecological environment has been restored. Scholars who hold this standard believe that the fundamental purpose of environmental administrative public interest litigation is the protection of environmental rights and interests, so the protection effect of environmental public interest litigation is directly taken as the precondition of environmental administrative public interest litigation. The procuratorial organ determined that the forest Public Security Bureau was negligent in performing its duties on the grounds that the forest resources had not been restored. Compared with the behavior standard, the result standard is less difficult to investigate and obtain evidence, which is convenient for rational regulation of judicial resources. But on the other hand, the "one-size-fits-all" judgment standard is too rigid, which is easy to conflict with the flexible judicial practice, resulting in the failure to achieve the effect of environmental protection. [3]Such as the above "Taobei Forest and Grass Bureau administrative public interest litigation case", if the result standard is taken as the measurement standard, the Taobei Forest and Grass Bureau does not need to take measures to help the grassland recovery, only rely on the ecological natural recovery, grassland resources will inevitably be difficult to recover, and environmental public welfare will be infringed.

The composite standard is to consider both the behavior of administrative organs and the effect of environmental public welfare protection, taking into account both behavior and result. It is mainly divided into two situations, one administrative organ has corrected the illegal act, and the environmental public welfare has been protected, at this time, the administrative organ should be recognized as performing its duties. If the two are not met at the same time, it is necessary to consider whether the administrative organ has exhausted all administrative means within the scope of its powers, but the environmental protection effect has not been achieved because of no other objective reasons, at this time it should also be determined that the administrative organ has completed its performance[5]. For example, in the "Jianchuan County public interest Litigation case", the court held that whether the illegal acts of the administrative counterpart have stopped, whether the administrative organ has fully, timely and effectively taken legal supervision measures, and whether the national interests or social public interests have been effectively protected should be used as the criteria to judge whether the administrative organ has performed its legal duties.

It is not difficult to see that in practice, procuratorial organs, administrative organs and people's courts have completely different identification of "performance standards". For example, in the case of "Jianchuan County public interest Litigation", the procuratorial organs have determined "idling in performing their duties" based on the result standard, that is, the forest resources have not been restored, and the administrative organs have issued administrative penalties and

urged the administrative counterpart to confirm that they have completed their duties based on the behavior standard. The court examined the case with the composite standard of both conduct and result. The judgment criterion of whether the administrative subject performs its duties according to law has always been controversial and needs to be solved by the academic circle.

2.3. The imperfection of the consultation mechanism in the pre-litigation procedure

Environmental administrative public interest litigation cases were searched through the Judgment documents network, and the search methods were: "Full text search: public interest litigation", "Case cause: Environmental protection administrative management (environmental protection)", "case type: administrative case", "trial procedure: administrative first instance", "Document type: judgment", a total of 112 judgments. After screening the cases and excluding the cases that did not meet the provisions, there were only 98 cases, of which only 21 cases were judged "illegal", accounting for 21%, and 77 cases were judged illegal administrative acts and ordered the administrative subject to continue to perform them, accounting for 79%. For example, the verdict of "Jinsha County People's Procuratorate v. Jinsha County Guihua Township People's Government case" is as follows: 1. It is confirmed that the defendant Jinsha County Guihua Township people's Government did not ensure the normal operation of sewage treatment facilities, causing the direct discharge of domestic sewage; 2. Order the defendant Guihua Township People's Government of Jinsha County to fully perform its duties according to law, investigate and maintain the existing sewage treatment facilities and equipment in the market town in a timely manner, dredging the sewage pipe network, and ensure the normal operation of sewage treatment facilities and equipment in the market town. The single result of the judgment indicates that the purpose of environmental administrative public interest litigation is not litigation, but to solve the damage to the environmental rights and interests caused by the illegal act or omission of the administrative organ. At this time, we can appropriately strengthen the communication between procuratorial organs and administrative organs, and try to solve the infringement in a peaceful way without litigation. In other words, the consultation mechanism could be improved in the pre-litigation process to avoid cases entering into litigation.

The Rules for Handling Public Interest Litigation of the People's Procuratorates stipulate the consultation procedures, and the people's procuratorates may hold symposiums and other forms of consultation on matters such as whether an administrative organ has illegally exercised its powers or failed to act, the consequences of infringements on social and public interests, and rectification plans. But in judicial practice, the effect of consultation procedure is often not satisfactory. The reason is that the procedural provisions on the consultation mechanism are not perfect. The current law only stipulates that the procuratorial organ has the right to initiate consultation, but it does not stipulate the time and conditions for the commencement of consultation procedures. Therefore, the relevant provisions adopted by different places are also very different, resulting in the implementation and application of the consultation mechanism is not significant in practice.

3. The improvement of environmental administrative public interest litigation system

3.1. Expanding social organizations as subjects of prosecution

As a major type of environmental public interest litigation, environmental civil public interest litigation generally takes procuratorial organs, social organizations and citizens as the main body of litigation. Its purpose is to protect social public interests through judicial means and

make up for the deficiencies of government public power in environmental protection. Similarly, with the increase in the number of environmental administrative public interest litigation cases, a single litigation subject cannot completely solve the phenomenon of environmental damage caused by illegal acts or omissions of administrative organs. As the common benefit of the whole society, the ecological environment benefit should also bear the corresponding responsibility. Environmental public welfare, as a special social public welfare, needs more social supervision to reduce the pressure of judicial resources shortage. Therefore, we can expand social organizations as supplementary subjects and authorize specific types of social organizations to have the right to bring environmental administrative public interest litigation under legal conditions. In practice, the number of environmental civil public interest lawsuits filed by social organizations is relatively small, mainly because environmental civil public interest lawsuits are difficult to prove and require expensive litigation costs, leading to low enthusiasm of some social organizations. Different from environmental civil public interest litigation, environmental administrative public interest litigation is aimed at the illegal acts or omissions of administrative organs. The responsibility to prove the legitimacy of administrative acts lies with administrative organs, and the litigation only needs to provide preliminary evidence, and the litigation cost is relatively low. Environmental protection public welfare social organizations established in accordance with the law, with the purpose of safeguarding the common environmental interests of members, social public interests and national interests, are familiar with the field of environmental protection, can solve the same environmental administrative problems involving multiple parties as a whole, and have the advantages of group litigation, which is conducive to saving judicial resources and improving environmental protection efficiency. Therefore, it is suggested that social organizations should be given the right to file environmental administrative public interest litigation. At the same time, the administrative power of the administrative subject should be respected. It can be added to the Administrative Procedure Law that "a specific social organization finds that the illegal act or omission of an administrative organ is the result.

3.2. The "standard of conduct" shall be used as the criterion for judging the performance of duties in accordance with the law

As the object of environmental administrative public interest litigation protection, environmental public interest has its particularity and is quite different from ordinary social public interest. The damage of environmental public interest generally has multiple causes and continuity, while the ordinary damage is usually direct, and the causal relationship is relatively simple, which is easy to judge. Therefore, the particularity of environmental public interest requires the application of behavioral standards as a measure of litigation initiation. The continuity of environmental public welfare means that protecting environmental public welfare is usually a long-term and continuous process, and it takes a long time to solve the violations of environmental public welfare and restore the original ecology. This means that if the administrative department is lazy in performing its duties in environmental protection and performs its duties recklessly, its consequences are often not apparent overnight, and it takes a long time. Similarly, once the consequences of damage occur and the administrative organ corrects the illegal act, the recovery of the damaged public welfare is not immediate and needs time to consider. Based on this result standard, it does not fit the particularity of environmental public welfare, because the result standard only considers the result of a certain point in time, and does not consider the effect of environmental public welfare protection in the rest of the time. At the same time, after the environmental damage occurs, the rectification period recommended by the prosecution is generally only two months, and the prosecution's review and prosecution period is only one month. During this period, even if the administrative organs correct their own mistakes, the effect of environmental public welfare rectification will take a

long time to emerge. If the result standard is adopted in environmental administrative public interest litigation, the administrative agency will be sued by the prosecution even if it has actively performed its duties but cannot achieve the desired effect due to time constraints. On the one hand, it will frustrate the enthusiasm of administrative subjects to perform their duties, and on the other hand, it will hinder administrative organs to carry out administrative law enforcement. For example, in the case of "Hunchun Forest District People's Procuratorate v. Hunchun Forest Public Security Bureau for not performing legal duties", the procuratorial organ believes that Hunchun Forest Public Security Bureau has failed to perform legal duties, resulting in the inability to restore the woodland reclaimed by the administrative counterpart without authorization

The author argues that the standard of conduct is more appropriate than the standard of result in environmental administrative public interest litigation. The first behavioral standard is more in line with the irreversibility of environmental damage and the preventive needs of environmental public welfare protection. "Because the consequences of environmental damage are often extremely serious, once it occurs, it is difficult to make up, so it is the core principle of environmental law to strive to prevent it from happening" behavior standards from the source to avoid the occurrence of environmental violations, to achieve the preventive effect of prevention. At the same time, it respects the process of administrative law enforcement, if the administrative organ actively responds to the procuratorial suggestions, even if the environmental damage is not eliminated, it should distinguish the responsible subject, consider the behavior of the administrative counterpart, and give the administrative subject a certain period of time, rather than directly resorting to public interest litigation.

3.3. Strengthen the consultation mechanism in pre-litigation procedures

As mentioned above, after the occurrence of environmental damage, the administrative organ has only two months to rectify the situation after receiving the procuratorial recommendation, and the procuratorial organ has only one month to Sue after the expiration of the period. In other words, from the time the environmental damage occurs to the time when a lawsuit is filed, the administrative authorities have only three months to rectify it. Because the protection of environmental public welfare often needs long-term and continuous protection, three months of rectification time can not effectively reflect the effect of environmental rectification. Therefore, before initiating a lawsuit, the procuratorial organ should give the administrative organ the opportunity to make a statement and defend itself before determining whether the administrative organ is actively and properly performing its duties. At the end of the rectification period (two months), a consultation forum organized by the procuratorial organ, with the participation of the administrative body, and mediated by the people's court can be held to effectively avoid the obstruction of information between the two parties before the lawsuit. The conditions for the commencement of the consultation procedure should also be clearly stipulated, which should be reported to the procurator-general by the procurator-general, and notified in writing to the administrative body after the examination and approval by the procurator-general. If the agency refuses to negotiate, it will proceed to the next stage of litigation. The contents of the consultation between the two parties should mainly include: the administrative organ should take the initiative to explain to the procuratorial organ why the rectification period has not eliminated the harm caused to the environmental public welfare, and report the effect achieved by the rectification period, and explain the next rectification plan. On the other hand, procuratorial organs should also fully consider the practical nature of environmental damage, fully listen to the opinions of administrative organs, and judge whether it is necessary to take legal proceedings. In order to ensure the openness and transparency of the consultation procedure, relevant representatives, social organizations and other third parties may be invited to participate and express their views.

Acknowledgement

This work was supported in part by a grant from “Postgraduate Research Innovation Fund Project of Anhui University of Finance and Economics(ACYC2023243)”

References

- [1] Yisong Li, Yong li. Liu: Review of the current situation and path optimization of China's environmental public interest litigation system, Nanjing Social Sciences, Vol.6(2021), p.91-98.
- [2] Qingjun Wang: The review basis of administrative inaction in environmental administrative public interest litigation. Tsinghua University Law Journal. Vol.2(2020), p.129-142.
- [3] Wanghua Wang: Some problems on perfecting the system of procuratorial organs bringing administrative public interest litigation. Law Science Magazine, Vol.39(2018), p. 96-108.
- [4] Jun Zhao: Judgment criteria of administrative organs performing their duties in environmental administrative public interest litigation, Law Science, Vol. 10 (2023), p.33-45.
- [5] Jiaoyun Xia: Review and reflection of administrative public interest litigation cases lost by procuratorial organs . Journal of Henan University of Economics and Law, Vol. 36(2021), p.1-9.