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The System Construction of Administrative Public Interest Litigation of Preventive Environmental Protection in the Field of Wetland Ecological Governance in China

Shumeng Zhang*

School of Law, Fujian Normal University, Fuzhou, Fujian 350117, China
*Corresponding Author: 2430227738@qq.com

ABSTRACT

This paper analyzes the expected effect of preventive wetland protection public interest litigation in the construction of ecological China and provides decision-making reference for the construction of preventive wetland protection public interest litigation system.

KEYWORDS

Wetlands in China; Wetland ecological protection; Environmental protection administrative public interest litigation; Preventive environmental litigation.

1. INTRODUCTION

As one of the most biodiversity in nature and the most critical living space for human beings, wetland provides abundant natural resources for our daily activities and has great ecological and environmental protection value. They can effectively prevent floods, regulate rainfall, store water in response to drought, reduce pollution, regulate temperature, slow land erosion, promote river mud deposition to form new land, and improve the quality of the surrounding environment. For this reason, wetlands, known as the "kidneys of the earth", have become valuable assets in maintaining China's ecological security and sustainable socio-economic development.

Nevertheless, due to the rapid and continuous expansion of the population, our demand for land is also increasing, and the continuous abuse of wetland resources and over-exploitation of forests have made the number of natural wetlands in China decreasing year by year, their efficacy and efficiency have also decreased, the biological species in wetlands are gradually disappearing, and the water quality of lakes is becoming more and more acidic. The area is also becoming smaller, and the water quality in rivers is also seriously polluted, which poses a great threat to the living environment of wetlands. Nowadays, wetlands have been seriously damaged and their ecological functions have been weakened a lot. Therefore, the current problems of environmental pollution, decline and extinction faced by wetlands remind human beings to correct the wrong practices in the process of economic development in time and solve a series of environmental problems caused by human activities.

Nowadays, many examples show that human's influence and manipulation on the natural environment, and even the wetland area established by artificial means may not comply with its natural laws, which may lead to the second pollution, and then affect the function decline of the ecological environment and economic losses. In addition, the species reduction and the imbalance of material and energy exchange of wetland ecosystem due to overdevelopment will accelerate the loss of ecological functions. And in the current judicial practice in China, environmental public interest litigation is

mainly concerned with the remedial measures after the damage. As far as the environmental public interest of wetlands is concerned, it has the characteristics of high restoration cost, slow ecological environment restoration process and irreparable environmental damage. If the lawsuit is only launched after the damage has occurred or has had an impact, it will not only fail to effectively achieve the goal of establishing environmental public interest litigation, but also make the legitimate rights and interests of the victim not fully guaranteed, increase the burden of environmental maintenance and restoration, and make the offender bear less legal liability than the illegal act, thus leading to the deviation of legal fairness. At the same time, China's wetland protection work is relatively backward, facing a large ecological restoration task, the current concept of environmental public interest litigation trial is conservative, existing laws and regulations have loopholes, and the current environmental court process still needs to be improved. Therefore, reasonable manual intervention is very important to maintain its stability and turn it into preventing losses in advance.

The implementation of a conservation-first and prevention-centered approach is required by China's Environmental Protection Law and is in line with the maintenance needs of wetlands. Environmental public interest litigation not only has the function of saving and preventing the environment, but also for serious water pollution, ecological environment destruction, animal and plant migration and biodiversity reduction and other problems, we must further strengthen the construction of preventive environmental public interest litigation system, so as to deal with environmental dangers and injuries through the court, and provide legitimacy and guarantee for them.

2. LITERATURE REVIEW

China's current environmental legal provisions show that the concept of preventive environmental public interest litigation system has already existed, and gradually began to guide the judicial practice of environmental public interest litigation in our country.

In 2014, the Environmental Protection Law was revised to take the "precautionary principle" as one of the basic principles of environmental protection rule of law construction, making China's environmental law began to transition from "ex post relief" to "prevention and relief at the same time". The "Interpretation on Several Issues concerning the Application of Law to Hearing Environmental Civil Public Interest Litigation Cases" promulgated and implemented on January 7, 2015 clearly stipulates the provisions on preventive public interest litigation, formally establishes China's preventive environmental civil public interest litigation system, and improves the level of legal protection of the ecological environment. On June 1, 2022, the Wetland Protection Law of the People's Republic of China was officially implemented, and on November 5 of the same year, the Supreme People's Procuratorate issued the first batch of typical cases of wetland protection public interest litigation. These measures provided legal and practical references for the system construction of wetland preventive public interest litigation in China, and the improvement of relevant laws also promoted a more mature legal environment for preventive public interest litigation of wetland protection.

In addition, many domestic environmental law scholars have agreed that the preventive function of environmental public interest litigation should be emphasized. For example, Professor Wang Chunye of Hohai University stressed that the main reason for the defects of post-relief in environmental public interest administrative litigation is the imperfect structure of the Administrative Procedure Law. All litigation matters stipulated in the law must be litigated based on the result of the injury that has already occurred. Similarly, Lu Zhongmei, a member of the Standing Committee of the National People's Congress and vice-chairman of the Environment and Natural Resources Protection Committee of the NPC, also argued that the core of the Environmental Protection Law should focus on the prevention and control of environmental risks. Cao Shenke, professor of Huaqiao University, pointed out in his research paper that preventive public interest litigation is an important means of ecological protection, and China has enough foundation to build and implement such a system, which

also meets the requirements of our country for ecological and environmental protection. Finally, Professor Wu Kaijie from Renmin University of China said that from the perspective of environmental legal system, the current environmental public interest litigation, which mainly relies on ex-post relief, is not conducive to protecting the public's environmental rights and interests, and it cannot provide effective strategies to deal with large-scale environmental crises in society. Chinese academic circles attach importance to environmental public interest litigation and preventive public interest litigation year by year, and the research papers and achievements are increasing year by year. Many scholars have stressed the importance of environmental damage prevention through public interest litigation system. As the requirements for ecological environment become more stringent, the country also needs to change the development mode of ecological protection.

The international precautionary principle originated from the environmental law of Germany and Sweden, and was introduced into the international environmental treaty by the German representative in 1984, and further spread by Principle 15 of the Rio Declaration adopted by the United Nations Conference on Environment and Development in Rio in 1992. Since then, the precautionary Principle has been widely used to deal with Marine living resources, transnational transfer of waste, toxic chemical pollution, ozone layer protection, climate warming and risk management of genetically modified organisms. It has become an important part of many international environmental treaties and provided an important basis for national environmental policies. In recent years, the prevention-oriented concept has gradually become a novel risk management strategy in global environmental protection regulations. While this idea is ideal for addressing the environmental threats posed by a lack of technological information, it also raises a number of technical, legal and political challenges that could have profound implications for countries' ecological rights and obligations. As a result, States have been cautious about accepting or applying this concept. In addition, the environmental protection legal and regulatory systems and their public prosecution mechanisms in different countries and regions have their own unique focus and development path according to the actual situation of the country.

3. INSTITUTIONAL FRAMEWORK CONSTRUCTION

To sum up, preventive environmental administrative public interest litigation can fully implement the Wetland Protection Law, enhance the awareness of all parties to wetland protection, safeguard the wetland ecological environment, and solve the "historical disease" of multiple jurisdictions and administrative inaction in the field of wetland protection. Specifically, legislative or judicial interpretation should be adopted to clarify the scope, timing and litigation procedure of preventive environmental administrative public interest litigation.

In the research process, the author takes comparative analysis as the core idea, literature study as the main means, and comprehensively uses case analysis and statistical analysis methods to investigate and analyze the 14 typical cases recently released by the Supreme People's Procuratorate and other relevant cases in various provinces, so as to explore the general public. The attitudes and suggestions of wetland practitioners, relevant state organs and their workers on wetland protection public interest litigation, as well as the research status and judicial practice cases of environmental public interest litigation and preventive public interest litigation at home and abroad, combined with the current development status of China's wetland ecosystem and restoration problems, comprehensively analyzed the significance of the pre-assessment and risk avoidance mechanism. To provide basic data support and theoretical support for exploring constructive suggestions on preventive public interest litigation of wetlands.

In view of the current research status, the research mainly proposes solutions to the following three difficulties in the current research.

3.1. The scope of accepting cases of preventive environmental administrative public interest litigation for wetland protection

In the existing research results of preventive administrative litigation, many scholars have proposed to establish a preventive administrative litigation system in China, but their suggestions often limit the scope of filing, suggesting that a small number of cases that may damage the public interest should be taken as the scope of accepting preventive administrative litigation. The author agrees with the above views. Although environmental risks are part of bringing a preventive public interest lawsuit, it does not mean that all environmental risks are included in the lawsuit to be resolved. When implementing this system, we should fully evaluate the reasons and legality of preventing environmental risks, rather than just relying on high costs to prevent environmental risks. If all acts that may cause harm to the environment are included in the scope of accepting cases, it will seriously increase the workload of judicial law enforcement agencies and may lead to the waste or abuse of judicial resources. At the same time, preventive administrative public interest litigation is a relatively new concept in our country. When it was put into practice at the beginning, it should also be piloted in a smaller scope so as to make timely adjustment when it is not piloted.

Therefore, we should carefully set and precisely define the scope of acceptance of the environmental public interest litigation prevention and control system established in China, and adopt as detailed and comprehensive a method as possible to determine this category. For example, by integrating the concept of regional protection (such as dividing nature reserves into experimental areas, buffer areas and core areas), the acceptance of public interest litigation cases arising from environmental protection projects outside the experimental areas can be limited.

3.2. Suitable for the main plaintiff in the public interest litigation of wetland protection preventive environmental administration.

Regarding the access of qualified plaintiffs in the field of preventive environmental administrative public interest litigation, we can refer to European and American countries that are ahead of China in the legal protection of wetlands. The United States is the first country to establish the system of citizen litigation in environmental protection law. In the revised Clean Air Act of 1970, the United States Senate introduced the environmental legal mechanism on citizen litigation, thus formally establishing the system of citizen litigation for environmental protection. In Japan, there is no special legislation on wetland protection, and wetland protection is scattered among the regulations on other environmental factors. It adopts a combination of public participation and state management in environmental protection. Wetlands conservation in Australia also relies on a flexible model of public participation. The most distinctive is the wetland protection consultation system, which is mainly reflected in the consultation with the indigenous people, integrating their ethnic characteristics and national characteristics.

Although environmental protection rights and interests have not yet been incorporated into the legal framework, the environmental interests they safeguard are consistent with the objectives of the Environmental Protection Law, so it is necessary to recognize and protect them. If we accept the existence of citizens' environmental rights and interests, when these rights and interests face a "risk of serious harm to the public's environmental interests", it is reasonable for citizens to have the ability to defend their rights and interests against infringement and rebuttal. Because environmental risks are often hidden and unpredictable in the early stages, China's environmental groups may not be able to deal with all the potential environmental risks at this stage because of their public nature or geographical location. For example, in the case of wetlands, which are widely distributed and involve many protected objects, many countries have chosen to use multiple forces to protect them, such as management teams composed of communities, government agencies, citizens and non-profit organizations working together. Some Chinese scholars advocate expanding the scope of qualified plaintiffs in environmental infringement cases to include ordinary people, who can provide better

support for environmental protection. In order to prevent citizens from overusing environmental protection requirements, specific regulations can be considered to clarify which violations are environmental crimes, so as to encourage more people to pay attention to environmental safety issues and identify potential environmental hazards as early as possible.

3.3. Implementation and popularization of the principle of risk prevention

In recent years, the principle of risk prevention has been progressively valued and advocated, and has attained certain achievements in the domain of public interest litigation. Nevertheless, the principle of risk prevention has not been systematically legislated in our country, with its concept remaining ambiguous and its application scope restricted. This also leads to a deficiency in the in-depth comprehension among legal practitioners and the public regarding the significance of wetland protection and the exigency of prevention work. Hence, it is indispensable to transcend the traditional judicial relief model, clarify the notion of risk prevention, enhance the theoretical support of preventive judicial relief, and continuously expand the popularization and acceptance of the principle of risk prevention.

At the institutional level, the current legal system of wetland protection has not fully incorporated the principle of risk prevention. In accordance with the prohibition stipulations of Article 28 of the Wetland Protection Law regarding the behaviors that undermine wetlands and their ecological functions, the court is theoretically supposed to adhere to the criterion that there is a causal relationship between the behavior and the result when filing a case, in order to identify the behaviors that undermine wetlands and their ecological functions. Prior to the act, there are no corresponding legal provisions to prevent it.

In practice, from the perspective of natural laws, numerous significant wetland risks are latent and can only be identified after prolonged observation and investigation, which complicates the determination of the scope and extent of wetland risks. From the perspective of legal provisions, within China's laws, judicial interpretations, regulations and rules on environmental protection, the discussion of significant risks is scarce and mostly remains at a textual level, without making more detailed and profound regulations. Due to the ambiguous understanding of significant risks, judicial workers have to employ a concept that has not been fully affirmed and mastered to measure the same uncertain environmental risks during the implementation process. Therefore, the major risk identification criterion is the primary factor that restricts the advancement of the preventive wetland protection public interest litigation system.

4. CONCLUSIONS

In recent years, China has spared no effort in wetland protection and restoration, and remarkable achievements have been made in wetland protection and management. According to the data of the second national wetland resources survey, the national wetland protection area has reached 43.51%, and the ecological condition of China's wetlands has been continuously improved. However, there is still a long way to go in wetland restoration and protection. Implementing the principle of protection first and prevention first is the inevitable choice to realize the sustainable development of wetland ecosystem. Therefore, through the construction of preventive wetland protection public interest litigation system, the authenticity and integrity of wetland ecosystem protection can be achieved, and the carbon sequestration value of wetland ecosystem can be fully utilized to promote the realization of China's "double carbon" strategic goal.

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