

Study on the Driving Force of the Subjects of Environmental Public Interest Litigation in China

-- The Impact of Current Laws and Regulations on Social Organisations' Participation in Environmental Public Interest Litigation as an Example

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ABSTRACT

In order to follow China's basic national policy of "protecting the environment", stimulate the supervision function of multiple subjects, and avoid the occurrence of "government failure", China has stipulated that social organisations can initiate environmental public interest litigation, which adds bricks and mortar to China's environmental protection cause. However, due to the complexity of the real situation, China's current laws and regulations in stimulating the vitality of social organisations are flawed, social organisations have lost their due function, in order to stimulate the driving force of social organisations, to improve the system to put forward a good strategy, this paper will be compared with the United States and China to put forward the system of our country can be borrowed from, the reality of the dilemma of the proposed measures to cope with it.

KEYWORDS

Environmental Public Interest Litigation; Social Organisations; Drivers; Accreditation; Litigation Costs.

1. INTRODUCTION

As China enters the stage of rapid development, the protection of the environment and the rational use of resources has become China's basic national policy, and in recent years have been put forward one after another the strategy of sustainable development, environmental protection has become the top priority of China's development. General Secretary Xi Jinping has also stressed many times that green mountains are golden mountains, with China's social development and environmental protection contradictions gradually deepen, the government as the only main body of environmental protection is obviously not strong enough, the introduction of diversified main body to participate in environmental protection and supervision is the reality of the situation needs to be formulated to protect the environment and enhance the vitality of the main body to participate in the development of environmental protection system and even more urgently.

In recent years, China's environmental protection legislation has been gradually improved, and the practice of environmental civil public interest litigation is also advancing, China has amended the Civil Procedure Law in 2012, new Article 55 provides that social organisations have gained the statutory qualification for prosecution, and then formulated detailed provisions for social

organisations to initiate environmental public interest litigation, scholars have also continued to put forward suggestions and solutions for the dilemma of social organisations' participation in environmental public interest litigation to promote the improvement of the law as soon as possible. [1] However, due to the complexity of the reality, social organisations are not sufficiently driven to participate in litigation and fail to effectively play a role in environmental public interest litigation. Weak forensic ability, insufficient funds, lack of professionalism, lack of responsibility of internal members, etc. have become obstacles for social organisations to participate in it. Laws and regulations to a certain extent to determine the qualifications of social organisations of the plaintiff, but in the access threshold is very strict, meet the requirements of the social organisations are few and far between, more greatly weakened the power of social organisations. In summary, China's current laws and regulations on social organisations play a certain role, however, there are still systemic deficiencies, need to be further improved and strengthened in practice. At the same time, environmental public interest litigation as a "foreign product" needs to absorb foreign experience and advantages in the construction of the system, such as the United States of America's social organisations to participate in a higher degree, through a comparative analysis of China's system to supplement. Therefore, this paper will be from China's environmental public interest litigation system of the current effect as well as the United States and China comparison, system recommendations and other aspects of the development of the narrative, the text will be used in the case study method, comparative research method, and historical analysis method and so on.

2. ANALYSIS OF THE CURRENT EFFECT OF THE CURRENT ENVIRONMENTAL PUBLIC INTEREST LITIGATION SYSTEM IN CHINA

2.1. Determination of the Qualifications of Social Organisations as Plaintiffs in China's Current Environmental Public Interest Litigation System

With the deepening of China's environmental public interest litigation judicial practice, the legal system of environmental public interest litigation is also gradually improved, and the relevant rules are constantly specified. At present, China's relevant laws and regulations can be divided into two categories: the scope of the main body, the establishment of social organisations in the environmental public interest litigation of the qualification of the plaintiff. 2012 China in the revision of the "People's Republic of China Civil Procedure Law" added a new Article 55: for pollution of the environment, infringement of the legitimate rights and interests of many consumers and other damage to the public interest of the community, the relevant organs and organisations can be filed with the people's court litigation. The introduction of this provision marks the beginning of a new era in social organisation. The introduction of this provision marked the qualification of social organisations as plaintiffs in public interest litigation. [2] After this, more detailed regulations have been made on the participation of social organisations in public interest litigation, such as their access conditions, financial assistance, etc. Article 58 of the amended Environmental Protection Law of the People's Republic of China in 2014 specifies the access conditions for social organisations that can file lawsuits with the People's Courts, such as: registering with the civil affairs department of the people's government at or above the municipal level in accordance with the law, and having no record of violating the law or committing criminal offences. These two types of laws and regulations give social organisations the opportunity to bring lawsuits, but strictly limit the qualifications of social organisations in terms of specific rules, which also limits their vitality to a certain extent.

2.2. Analysis of the Effects of Laws and Regulations before and after Their Promulgation

After the promulgation of laws and regulations, the number of cases of social organisations' participation and environmental public interest litigation has increased significantly, according to data released by the Supreme People's Court, from 1 January 2015 to 31 December 2016, the courts nationwide accepted a total of 112 first-instance cases of environmental public interest litigation filed by social organisations, and concluded 54 cases, which is a substantial increase in the number of cases compared to the annual average of 8 cases prior to 2015 growth. In terms of type, the cases involved a broader scope, covering the atmosphere, water, soil, ocean, forest, protection of endangered animals, and protection of humanistic and historical sites, among others. Geographically, the number of cases has expanded from 3 or 4 provinces to 21 provinces, municipalities and autonomous regions. [3] Social organisations did exist for a period of time after the promulgation of the regulations, however, in terms of the participation of qualified social organisations, the situation is not optimistic. According to the Ministry of Civil Affairs, there are about 700 social organisations with the qualification to initiate environmental civil public welfare litigation. However, in practice, less than 5% of social organisations have filed environmental civil public interest litigation, so we can see that social organisations are not highly motivated to participate in environmental public interest litigation, although some social organisations filed environmental public interest litigation for the first time, and had the idea of trying to get closer to the idea and put it into practice, but due to a number of reasons social organisations did not make the next step to try, and environmental public interest litigation is a lengthy process and investment of funds, some cases have a cycle time of up to three to five years. Huge, some cases cycle up to two or three years, in the process of sending products may cost several million, general social organisations can not afford; today's regulations on the social organisations of the conditions are more stringent, the general social organisations can not be achieved, and the county and municipal social organisations are often more access to the regulatory negligence due to the cause of pollution of the enterprise, but this part of the social organisations do not qualify for as a plaintiff, the "can not have a criminal record", "can not have a criminal record", "can not have a criminal record," and "can not have a criminal record". In terms of "not having a criminal record", some enterprises are afraid of social organisations, disregarding the moral bottom line to "pour dirty water" on social organisations, which makes them ineligible for litigation even if they meet the conditions. At the same time, social organisations also have their own limitations, as most of their internal members are temporary volunteers, with a weak sense of responsibility, poor professionalism, low motivation to participate, and a lack of organised and disciplined management, resulting in a lack of internal driving force. To sum up, social organisations face great obstacles and difficulties due to laws and regulations, the general social environment and internal problems. The promulgation of laws and regulations has a certain effect on stimulating the vitality of social organisations, but there are still limitations.

3. COMPARISON OF THE CHINESE AND AMERICAN SYSTEMS AND DRAWING ON THEIR STRENGTHS

Environmental protection cannot be achieved without the concerted efforts of many parties, and the government, as a key player, plays an important role, but sometimes the government may harbour enterprises and lose its function for the sake of political performance and economic indicators. Social organisations, as supervisors and carriers of environmental public interest litigation, should play a supervisory and protective role in order to prevent "government failure". However, in the current legal system, the role of social organisations are limited, its development and growth are also subject to multiple factors, in addition to the difficulties complained of above, social organisations also face the lack of incentives and other obstacles, the development of social organisations in China is not optimistic. On this basis, the United States as the "originator" of the environmental public interest

litigation system, the role of social organisations can be maximised, indicating that there are many things to learn from its system, which is expected to help China's social organisations out of the dilemma, improve public understanding and participation, improve the quality of China's environment, and promote the synergistic development of economic development and environmental protection. The synergistic development of economic development and environmental protection. 4]

3.1. Restrictions on Entry Qualifications for Social Organisations in China and the United States of America

3.1.1. Conditions for Access to Social Organisations in China

The basic conditions for social organisations to participate in environmental public interest litigation in China include: 1) registration with the civil affairs department of the people's government at or above the municipal level of the district in accordance with the law; and 2) specialising in environmental protection public interest activities for more than five consecutive years without any record of violation of the law. However, very few social organisations meet the above conditions, and their establishment and registration procedures are cumbersome and time-consuming, resulting in very few social organisations registering with the civil affairs department. Meanwhile, Article 2 requires that social organisations have been engaged in public welfare activities for more than five years, but some social organisations face serious financial difficulties and are often forced to dissolve within five years, which is why most social organisations do not qualify. At the same time, the law also stipulates some restrictive provisions, for example, social organisations filing lawsuits are not allowed to seek financial benefits through the lawsuits, but social organisations do not have enough financial support, so they need to raise funds from the society to cover the costs of the lawsuits. Due to the restriction of such laws, it is impossible to judge whether social organisations have the tendency to seek financial benefits, so most of them will not take the risk of raising funds and filing lawsuits. As a result, most social organisations do not take the risk of raising funds and filing lawsuits, which greatly dampens and discourages social organisations' motivation and participation in public affairs.

3.1.2. Conditions of Access to Social Organisations in the United States

First, it authorises any person (including any citizen, social organisation, business, state government and its departments, the federal government and its departments and agencies, etc.) to bring a civil action in his or her own name against the following three categories of subjects: (i) any person, including the United States and state governments, who is suspected of having violated or is about to violate the discharge standards and effluent limitations provided for in the Act and the orders issued by the Federal EPA Administrator with respect to the discharge standards and effluent limitations (ii) any person, including the United States and state governments; (ii) the Administrator of the federal EPA who is suspected of violating nondiscretionary duties; and (iii) any person who engages in the construction of a new or expanded discharge facility, or engages in the production or operation of a facility, without possessing or in violation of a permit required under this Act relating to the control of pollution. Second, the pre-suit notice period procedure. Prior to the formal filing of a citizen suit, the plaintiff shall give written notice to the local government involved in the case, the federal EPA, and the defendants involved. Within 60 days from the date of receipt of the notice, if the local government or the Federal Environmental Protection Agency has taken enforcement action, the plaintiff shall not bring the lawsuit; if the local government or the Federal Environmental Protection Agency has not taken enforcement action during this period, the plaintiff may bring the case against the defendant to court. From this, we can see that the United States social organisations do not have too many formal restrictions on the conditions of access, and the process and its simple steps, sometimes half an hour can be registered, so the United States in the number of social organisations to participate in the United States has already taken the advantage. Secondly, American citizens can directly join social organisations to defend their rights if their interests are violated. On the contrary,

in China, there is no imagined "abusive" behaviour, but rather poor participation, the root of which is that too many social organisations are strangled in the cradle, unable to obtain a "legal" status. [5]

3.2. Comparison of Litigation Costs for Social Organisations in the US and China

3.2.1. Litigation Costs for Social Organisations in China

The costs that social organisations in China have to pay when conducting environmental public interest litigation include litigation costs, lawyers' fees, professional procedural inspection fees, and the costs of hiring experts, etc., which creates a great economic burden for the litigation work. Our country also stipulates that litigation costs need to be paid in advance by social organisations, and lawyers' fees also need to be paid in advance by social organisations, and in the Opinions on Comprehensively Strengthening Environmental Resource Judgement to Provide Strong Judicial Guarantees for Promoting the Construction of Ecological Civilisation, it is stipulated that, when the plaintiff is successful in the lawsuit, the defendant can bear the reasonable lawyers' fees and investigation and evidence collection fees, etc., and is encouraged to pay the plaintiffs' fees from the Environmental Public Interest Litigation Fund. However, both "can" and "support" indicate that this provision is not necessarily implemented, which gives the court a great deal of room for choice, the court may or may not choose to implement, "reasonable expenses There is no specific provision or way of judging "reasonable expenditure", which also increases the uncertainty of social organisations in raising funds and creates a greater financial burden. As litigation costs are not regulated in various places

For harmonisation, some regions will ignore the difference between public interest litigation and traditional civil cases. For example, recently, the Baise City Intermediate Court froze the accounts of public interest organisations and forced the implementation of litigation fees, which attracted widespread attention, and the public interest organisations had to bear up to 210,000 yuan of costs in this case. Although the Supreme Court has long since issued the relevant regulations, stipulating that the public interest litigation deferred, reduced, and exempted from the payment of litigation fees, however, it has left the final decision to the local courts, and due to the differences in the level of the local economy and the cognitive situation, some localities have not yet fulfilled this provision. Due to differences in economic levels and perceptions, some localities have not yet complied with this provision, which has resulted in uneven payment of litigation fees.

3.2.2. Costs of Litigation for Social Organisations in the United States

The traditional method of billing, whereby the plaintiff does not get the benefit of litigation but instead pays a high fee, is bound to discourage social organisations. The Clean Air Act changed the billing method to be borne by the losing party, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also stipulates that "the court may award costs to the prevailing party in accordance with the court's decision pursuant to this section and section 6976 of this Act. Nowadays, the United States "attorneys' fees pass-through provision" is the United States social organisations to participate in the environmental public interest litigation of economic support, in order to encourage environmental public interest litigation, the court is authorised to order the defendant to bear the plaintiff's attorneys' fees "as it deems appropriate". [6] Therefore, in terms of litigation costs and attorneys' fees, American social organisations do not have too much pressure, and can boldly carry out litigation, and the reward system formulated by the United States also plays an incentive role in the participation of environmental public interest litigation.

4. INSTITUTIONAL SUGGESTIONS TO ENHANCE THE DRIVING FORCE OF SOCIAL ORGANISATIONS' PARTICIPATION IN ENVIRONMENTAL PUBLIC INTEREST LITIGATION IN CHINA

4.1. Relaxation of Entry Thresholds for Social Organisations

Due to China's overly formal and strict accreditation of social organisations, the number of social organisations involved in environmental public interest litigation in China is small and the motivation to participate is low. To solve this dilemma, it is necessary to simplify the registration review process of social organisations, lower the type of social organisations to the county and district, in order to better understand the situation of grassroots environmental governance, and to learn from the experience of extra-territorial practice, for example, the U.S. Clean Air Act emphasizes that any person can file a lawsuit to protect the public interest in the name of public interest litigation, and our country, instead of realizing the expected "abusive" situation, only 5 out of 800 eligible social organisations are involved in the environmental public interest litigation. Instead of the expected "abusive litigation", only 5 per cent of the 800 eligible social organisations have participated. Relaxing the threshold of access and attracting more new forces into the field is a top priority.

4.2. Establishment of a Mechanism to Guarantee and Reward Litigation Costs

An equally serious problem faced by social organisations participating in environmental public interest litigation is the problem of funding; some cases last for two or three years, consuming a great deal of manpower, material and financial resources, and the high lawyer's fees and litigation costs discourage most social organisations, whereas the regulations issued by the Supreme Law give a great deal of "discretion" to the local courts, so social organisations are still unable to secure funding. Therefore, the funding of social organisations is still not guaranteed - the solution to this problem lies in the source of funding. First of all, should enrich the source of funding for social organisations, the government input is certainly the most important part, but the absorption of social funds is equally essential; Secondly, to strengthen the management of the absorption of funds to ensure that all absorbed funds for litigation cases; [7] At the same time, but also to establish litigation incentive mechanism, can learn from the United States "will be awarded to the winning party litigation fee "To stimulate the vitality of social organisations.

4.3. Improving the Quality of Social Organisations' Personnel and Strengthening Team Building

Social organisations within the members are mainly from volunteers, the team professionalism is insufficient and most of them are temporary workers, the sense of responsibility is weak, the team involved in litigation cases with low enthusiasm, to give full play to the role of social organisations in environmental protection, we need to mobilise social organisations to stimulate their vitality. [8] to improve the social organisation talent introduction system, to develop richer welfare policies, to attract more professionals to enter the job, in recruiting talent can be introduced to the university, divided into long-term medium-term and short-term workers to classify, in the continuous absorption of the new force at the same time also want to retain the team's backbone, from the internal enhancement of the quality of the personnel and professionalism in order to participate in the litigation case for the future better to play a good foundation.

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