

A Comparative Study of the Prosecution Qualification of Public Interest Litigation

GUAN Xin^{[a],*}; GUO Min^[b]; Qi Xiumei^[c]

^[a]Lecturer, School of Law, Changchun University of Science and Technology, Changchun, China.

^[b]Postgraduate, School of Law, Changchun University of Science and Technology, Changchun, China.

^[c]Associate Professor, School of Law, Changchun University of Science and Technology, Changchun, China.

*Corresponding author.

Supported by Soft Science Project of Jilin Provincial Science and Technology Department.

Received 6 October 2015; accepted 11 December 2015

Published online 26 December 2015

Abstract

In the middle of the 20th century, with the constant emergence of various public interest damage cases such as environmental pollution, infringement of consumer rights and interests, etc., every country in the world was exploring to establish a mode of litigation that would be different from the traditional private interest litigation, public interest litigation thus emerged as the times required. In the 21st century today, no matter in the countries of the common law system or the continental law system, they are all perfecting the corresponding public interest litigation system combining their own country's actual situation. In comparison, our country's regulation for the prosecution qualification of public interest litigation is still imperfect. This article thus tries to propose some suggestions for this situation from three aspects, i.e., enlarging the subject range for the prosecution of infringement of consumer rights and interests, exerting the main force of procuratorate, and increasing public participation.

Key words: Public interest litigation; Prosecution qualification; Comparative method

Guan, X., Guo, M., & Qi, X. M. (2015). A Comparative Study of the Prosecution Qualification of Public Interest Litigation. *Cross-Cultural Communication*, 11(12), 74-77. Available from: <http://www.cscanada.net/index.php/ccc/article/view/8033>
DOI: <http://dx.doi.org/10.3968/8033>

INTRODUCTION

In the middle of the 20th century, with the constant emergence of various public interest damage cases such as environmental pollution, infringement of consumer rights and interests, etc., every country in the world was exploring to establish a mode of litigation that would be different from the traditional private interest litigation, public interest litigation thus emerged as the times required. In the 21st century today, public interest litigation can be found in every county with a sound legal system. However, regarding the issue of the prosecution qualification of public interest litigation, the regulation of every country is quite different. There also exists a great controversy in the theoretical circle of our country regarding the prosecution qualification of public interest litigation. It has a great significance to perfect the public interest litigation system in our country by comparing the regulations of every country regarding the prosecution qualification of public interest litigation.

1. OVERVIEW OF THE PROSECUTION QUALIFICATION OF PUBLIC INTEREST LITIGATION

1.1 The Concept About the Prosecution Qualification of Public Interest Litigation

In our country, regarding the concept of public interest litigation, the theoretical circle has not yet formed a unified conclusion. The authors think that public interest litigation is a mode of litigation in which a subject with a legal authorization files a lawsuit to a court based on legal regulations when the public interest is infringed, in order to maintain public interests through court trial and the resulting judgment. And the prosecution qualification of public interest litigation refers to a right enjoyed

by the subject with the authority to file public interest litigation, through exercising this right to maintain public interests.

1.2 The History of the Prosecution Qualification of Public Interest Litigation

The earliest public interest litigation can be traced to the Rome law of the ancient Rome, which for the first time divided litigation into private interest litigation and public interest litigation. Moreover, this law clearly points out that citizens all enjoy the right to file public interest litigation unless the law has special provisions. It can be seen that, in the early stage of social development, citizen, as a subject, was endowed the prosecution qualification for public interest litigation.

The public interest litigation in the modern sense originated from the American civil rights movement in the period of 1950-1960. Afterwards, public interest litigation rose universally worldwide, exhibiting different appearances and forms. The advanced countries such as the United States, Great Britain, France, Germany, and Japan successively established different public interest litigation systems, and made different regulations for the prosecution qualification of public interest litigation. The foothold of all public interest litigations is nothing more than maintaining social public interests, protecting social vulnerable groups, and maintaining social justice and order.

Relatively speaking, our country's public interest litigation started relatively late, the history of public interest litigation in our country is only more than ten years. Currently, environmental public interest litigation and consumer public interest litigation have been incorporated into law; for administrative public interest litigation, corresponding implementation measures have just been drawn up, piloting nationwide.

2. THE COMPARISON OF FOREIGN PROSECUTION QUALIFICATION OF PUBLIC INTEREST LITIGATION

2.1 The United States

As the cradle for modern public interest litigation, the regulation for American prosecution qualification of public interest litigation was first seen in the 1863 edition of *Anti-Spoofing Government Act*. This act makes the following provisions "any person or company, after finding someone is spoofing the American government requesting for money, has the right to sue the illegal party in the name of the American federal government, and receive a part of fine after winning the lawsuit", this means that citizen and legal entity started to acquire the plaintiff qualification of public prosecution (Yan & Zhou, 2011). In the later 1890, America also issued *Sherman Antitrust Act*, which specified the prosecution subjects for economic public

prosecution, including the justice department, government, groups and individuals, further enlarging the subject range of having prosecution qualifications. The *Clayton Act*, which is similar to the *Sherman Antitrust Act* but aimed at making up for its shortcomings, was issued in 1914. It was clearly pointed out in this act that any individual, organization, or prosecutor may take legal action in the court. This is American early legislation and regulation in the economic aspect regarding public interest litigation, but strictly speaking, it is not the public interest litigation in the modern meaning, because at that time in order to present public prosecution, besides meeting the categories specified by the law, the subject must also have an interest with the case. In today's society, the prosecution subject of public interest litigation does not require the plaintiff to have an interest in the case. Even though its own interest is not infringed, as long as relevant legal provisions are met, the subject will be entitled to the prosecution qualification. Public interest litigation, which rose initially to eliminate racial discrimination, has extended to multiple areas such as environment, consumer, economy, politics, etc. by today. And the prosecution subject includes individual citizen, group, government agency and prosecutor; among them the most important one is the individual citizen. For this, the United States established the system of "private prosecutor". Therefore, in America, public interest litigation is also called "citizen lawsuit" or "popular action". Surveying the American public interest litigation system, the most important feature of its public interest litigation is to give full play to the power of the people.

2.2 The United Kingdom (UK)

As a representative country for the common law system together with the United States, public interest litigation in UK is quite different from the American related regulations. In UK, the development of public interest litigation is relatively slow. Because UK is a country of case law, legal precedent and statute law commonly promote the progress of law. But due to the incoordination of these two, obstacles to the development of law often were resulted. In the 19th century, UK strictly followed the idea of "no interest, no litigation", and thus the public interest litigation was not established. Until the judicial reform in 1977, the qualification standard of plaintiff received certain flexibility, the court started to accept cases regarding public interests. In today's society of UK, the main form of public interest litigation is "prosecutor litigation". Under this mode, for the issues of infringement of public interests, citizens may ask a chief procurator to exercise the authority. In the litigation status, the chief procurator is the plaintiff, and the citizen is the prosecutor. In the environmental aspect, the *Pollution Control Act* of UK provides that "for public hazards, anyone can bring a lawsuit." (Lü, 2000, p.88) At the same time it also provides that some organizations, under the agreement of

a chief procurator, may initiate public interest litigation about environment. In addition, UK has a special subject for public interest litigation. The UK law also offers special litigation rights to some organizations such as the Equality Commission of the United Kingdom as well as certain special public officials such as the Secretary of Fair Trade Bureau, to maintain social public interests (Zhang, 2000, pp.328-329). Although the development of the prosecution qualification of the subject for UK's public interest litigation is not smooth, the achievements are considerable. Overall speaking, in UK, the subject range for public interest litigation is relatively broad, but the execution of the prosecution qualification is somewhat difficult.

2.3 Germany

Germany is a representative country for the common law system, and its legislation mode generally has a greater impact on other countries of the common law system. Our country's legislation mode is also influenced by Germany in some degree. In Germany, public interest litigation is mainly group litigation. When the interests of majority people in the society are infringed, the special groups as specified by law have the prosecution qualification and may file public interest litigation as the plaintiff. Of course, these groups must follow the nature, purpose and constitution of their groups when filing public interest litigation. The nature of this litigation mode is to offer the prosecution qualification of public interest litigation to specific social groups by law. These social groups represent the country and people to exercise the prosecution right, prosecuting the subject infringing the social interests as the plaintiff for public interest litigation. Another subject for Germany's public interest litigation is the country. Germany requires in the law that, for the administrative illegal activities directly infringing the social public interests, public interest representatives will file the litigation. The *Federal Republic of Germany Administrative Court Act* establishes the public interest representative system for administrative litigation, i.e., the federal supreme prosecutor, state higher prosecutor, and local prosecutor are the federal, state, and local public interest representative, respectively (Hu & Lü, 2012). Also this act clearly defined in the clauses such as the 35th and 63th the setting mode and quantity for public interest representative, as well as the rights of public interest representative, etc. For Germany's legislation mode, there are relatively many restrictions for the prosecution qualification of public interest litigation, with strict conditions.

2.4 France

France's administrative public interest litigation enjoys high reputation in the world. It established the system of procuratorate participation in the civil actions representing public interests in as early as the French

Code of Civil Procedure of 1806, and this provision was imitated by other countries. The 421th clause in the new French *Code of Civil Procedure* provides that "procuratorate needs to file litigation as the main party, or participate in the litigation as the adjunct party. According to the provisions of the law, procuratorate represents the society." (Deng, 2012) For the administrative behaviors of administrative organ, if citizens believe that they have interests with them, no matter they are the spiritual interests or the material interests, as long as citizens believe that their own interests are damaged, they can file administrative public interest litigation. With respect to environmental public interest litigation, for the illegal actions, inaction in the administrative behaviors of administrative organ, or the negligence in the environmental pollution monitoring, supervision and administration, as well as the administrative procedures violating the laws and regulations, etc., any environmental protection groups may file administrative litigation that requires confirmation, withdrawal, or taking control measures to the administrative court. These provisions show that, in French, public interest litigation concentrates at the administrative aspect. Some people call the public interest litigation of French as the litigation exceeding authorities, which accurately shows the characteristic of its public interest litigation. This characteristic also determines that the prosecution qualification of French public interest litigation is mainly endowed to procuratorate and citizens, while social groups only enjoy the prosecution qualification in the aspect of environmental public interest litigation.

2.5 Japan

The fifth clause in Japan's *Administrative Procedure Law* divides administrative litigation into four categories. Among them, one category is called popular action, which is the so called public interest litigation. It refers to citizens asking to correct the illegal behaviors of the country or some public groups and filing litigation in the qualification of voters or in other no-interest qualifications in the law. Therefore, in Japan, the plaintiff of popular action can be taxpayers, voters those interests are generally affected, or other citizens (Hu, 1993, p.286). However, Japan's scholars believe that the purpose for popular action is not to safeguard the interests of the people, but to safeguard the objective order of law; therefore it has the nature of objective litigation. But Japan's popular action involves the aspects such as elections and resident action, although the starting point may be for safeguarding the object order of law, the real function is equal to public interest litigation. In addition, Japan Prosecutor's Office Act (No.78 Law in December 2, 1983) provides that, procuratorate conducts other laws specified affairs that belong to its terms of reference as the public interest representative (Deng, 2012). Therefore, we can say that the prosecution

qualification of Japan's public interest litigation is endowed to taxpayers, voters and other citizens, as well as procuratorate, its range is rather broad.

3. THE PERFECTION OF OUR COUNTRY'S PROSECUTION QUALIFICATION OF PUBLIC INTEREST LITIGATION

According to our country's current situation of legislation, combining the relevant provisions of foreign public interest litigation, the authors propose the following suggestions for the issue of the prosecution qualification of our country's current public interest litigation:

First, for the cases of infringing the lawful right and interests of many consumers, broaden the qualification for litigation subject. Currently, the provision that consumers' association above the provincial level has the right to file litigation was made according to our country's administrative districts; this admittedly fits the current situation that our country's administrative districts are drawn by the provinces. However, we should also see that, in today's society, the cases infringing consumers' lawful right and interests emerge endlessly, only providing provincial and national consumers' associations to prosecute illegal subject is far from enough, and this also inconveniences consumers in complaining and right-defending. Therefore, it should add the consumers' associations in the prefecture-level city as the prosecution subject for public interest litigation, endowing them with the prosecution qualifications. At the same time, it should speed up the release of corresponding judicial interpretations, offering specific, detailed provisions for litigation regarding infringement of consumer's right and interests.

Second, officially include procuratorate into the prosecution subject range of public interest litigation, endowing it prosecution qualification. In our country, procuratorate should play its role for public interest litigation as an important judicial authority. The *Pilot Program* issued in this July endows procuratorate the prosecution qualification for public interest litigation. However, this program is still a pilot project and needs two years of pilot time to be established officially. Thus, its effects will be subject to a discount. The authors suggest including it into our country's laws as quickly as possible, so procuratorate will serve as the role of "public interest litigant", playing its due role. Our country's procuratorates should play a major role in litigation just like the procuratorates in Germany.

Third, play the role of citizens in public interest litigation, endowing specific citizens front right to sue.

The nature of public interest litigation determines that it is mainly for serving social public interests; this of course requires the cooperation of ordinary citizens. No matter in the countries of the common law system or the continental law system, there exists the form of citizens filing public interest litigation. Therefore, we can also use for referencing foreign litigation modes, endowing specific citizens the qualification for filing public interest litigation. For example, certain specific groups of people, such as the citizens with direct or indirect relationships with the case, or the experts, scholars in the field of this case, or the legal workers, etc., are endowed the qualification of reporting to the procuratorate and asking it to stop the illegal behaviors. Such a pre-program not only can prevent indiscriminative lawsuits, but also can better supervise the procuratorate to exercise its authority, thus better safeguarding social public interests.

CONCLUSION

The study on public interest litigation has a long history in the world. It has also been rising for nearly 20 years in our country. Today, the discussion boom of public interest litigation still continues. For the already existing public interest litigation systems in every country around the world, we can absorb the excellent stuff through comparative study, combining our country's socialist national conditions, and developing it into a public interest litigation system with Chinese characteristics. Especially for the issue of the prosecution qualification for public interest litigation, our country's law is still imperfect, and should be perfected as soon as possible.

REFERENCES

- Deng, R. (2012). A comparative study on the plaintiff qualification of environmental public interest litigation. *Journal of North China Electric Power University (Social Sciences)*, (2-1).
- Hu, L. Y., & Lü, P. (2012, March 2). Multinational investigation on the plaintiff qualification of administrative public interest litigation. *People's Court Newspaper*, p.8.
- Hu, J. M. (1993). *A comparative study on the administrative law of ten countries* (p.286). Beijing: China University of Political Science Press.
- Lü, Z. M. (2000). *New horizons on environmental laws*. Beijing, China University of Political Science Press.
- Yan, Y. Q., & Zhou, X. M. (2011). The comparative study of public interest litigation systems. *Research on Rule of Law*, (11).
- Zhang, W. P. (2000). *Litigation framework and procedure*. Beijing: Tsing Hua University Publishing House.