

## The Construction of China's Environmental Public Interest Litigation Mechanism

TANG Meng<sup>[a],\*</sup>; SUN Kai<sup>[b]</sup>

<sup>[a]</sup> Lecture, J.D. Graduate Advisor, School of Law, Changchun University of Science and Technology, Changchun, China.

<sup>[b]</sup> School of Law, Changchun University of Science and Technology, Changchun, China.

\* Corresponding author.

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### Abstract

The environmental public interest litigation could promote the execution of environmental law and provide the public a way to anticipate. In order to protect the public participation in environmental justice, before public interest litigation, we should establish a consultation mechanism.

**Key words:** Public participation; Public interest litigation; Consultation mechanism

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### 1. THE DEFINITION OF PUBLIC INTEREST LITIGATION

In China, the public participation principle of environmental affairs has been set up for a long time, later introducing a number of specific provisions, but in practice, the lack of institutionalized public participation was a serious problem. The reason is there are no proper channels to the public, and the public do not have the opportunities, means there is no way to be involved. For violation of environmental laws, administrative authorities as the offense, if government cannot provide a mechanism for the public to be oversight, then, the people's democratic right to participate in and enjoy good

environmental interests cannot be guaranteed in the same time. Litigation provides such a mechanism, because "Weak victim litigation activities nationals in the hands of the most powerful means for a long time, has formed a strong public opinion, and social problems continue to prosecute to the proceedings as an opportunity to evoke concern about social issues, promote the process of legislative, administrative activities meanwhile". (Kojima Takeshi, 2003, p. 70)

Litigation can be divided into a public interest litigation and private interest litigation. The public interest litigation originated in Roman law, with respect to the private interest litigation. Private interest litigation is the only specific talent in order to protect individual rights lawsuit can be filed, public interest litigation is a lawsuit in order to protect the social and public interests, except the special regulation in law, and every citizen could promote litigation.

Compare to private interest litigation, the purpose of public interest litigation is to preside social justice, social equity, and maintaining national and public interests (LU & WU, 2007, p. 70). Accordingly, the public environment illegalities proceedings can be divided into two categories, a plaintiff has itself infringed by environmental use of the environment and resource development actors or permission of the lawsuit brought by the development and utilization of the environment and resources of government authority as a defendant here can be further divided into the environment, civil litigation and environmental administrative proceedings, which is characterized by "private is private interest"; and the other is "the plaintiff is not for their own interests have been infringed, but for the purpose of social environment might have been compromised, use of the environment and resource development actors or government agencies that license the development and utilization of the environment and resources for the defendant to the request of the court's decision to stop the development and utilization

of behavior or declared invalid administrative license litigation” (WANG, 2007, p. 41). This is an environmental public interest litigation, which is characterized by private charity. Ideas on environmental public interest litigation are institutionalized means of achieving environmental justice and environmental democracy, this litigation inspires public participation, giving opportunity, means and ways to public participation in environmental affairs, and its purpose is to seek changes in environmental laws and applied in a manner, which transform even reshape society as a whole.

## 2. THE IMPORTANCE OF ENVIRONMENTAL PUBLIC INTEREST LITIGATION

### 2.1 Urge Environmental Administrative Law's Enforcement

Environmental public interest litigation is “the purpose of the promotion of public welfare institution with the elements of the litigation, litigation actual implementers or should advocate considerable interests associated with the disputed event, but the actual purpose of the litigation is often not for relief in the case, judge the Government or controlled by actively taking certain statutory promoting the common good as the validity of the judgment may not be confined to the parties to the litigation” (YE, 2003, p. 224). The subject of the litigation on the public interest litigation, “it mainly in environmental pollution or ecological vandalism continue or continuous state objects, and to pose the court to release the referee ordered the perpetrator to stop environmental violations, repairing undisturbed environment or to pay the cost of repairing the major litigation purposes” (BIE, 2005). Public filed of environmental public interest litigation containing both and pollution occurred to take measures to curb, can determine the environmental public interest against the possibility that reasonably can be sued. Become a reality before the public cannot just sit around waiting environment against the exercise of the right to seek relief after completely to the public through the environmental public interest litigation damages killed in the beginning.

Form a triangular relationship between the government, business and the public, the Government has a responsibility to enforce environmental laws, supervision and implementation of environmental laws, the main control object is the development and utilization of environmental resources – enterprises; enterprises in violation of environmental laws and use of environmental resources standard discharge of pollutants in violation of environmental law, the public can bring environmental public interest litigation warning. However, we note the role of the public is to urge the Government to better fulfill its responsibility, the responsibility lies

with the government to enforce environmental laws, only when the government is not able to adequately fulfill its legal responsibilities, and the public as a public interest litigation is appropriate, therefore, the environmental public interest litigation filed by the public is a complement to, rather than instead of government environmental enforcement responsibilities. The court can balance the relationship between the participation of the public and the government to fulfill duties to do strict restrictions on when the court held that the need to emphasize the dominance of administrative law enforcement, it will bring environmental public interest litigation to the public, while when the positive role of the court to attach importance to the public promote the good implementation of the environmental laws, will be argued that the protection of a good implementation and effective functioning of the environmental public interest litigation.

### 2.2 Inspire Standard Environmental Participate

Due to the limited nature of the human cognitive ability, pollution and destruction on the surrounding environment is inevitable. With the accelerated pace of production development and urbanization, China's environmental problems become more and more serious, and led to a new class of disputes – environmental pollution disputes. On the one hand, environmental pollution disputes can be viewed as the inevitable result of the progress of science and technology, a high degree of industrialization of human society, led to environmental resources plundered; On the other hand, advances in technology also enables a better understanding of the environment than people ever concerned about the impact of environmental problems on human life, and to encourage people to fight in order to offend the interests of their own environment and rights.

According to the of the State Environmental Protection Statistics Administration, because of the environmental problems caused by the dispute, only complaints to the environmental protection department are more than 400,000 in 2001. The vast majority of these disputes are related to the polluters to stop polluting, to compensate for the losses. Since China does not have a special law for resolving environmental disputes and damages, environmental protection departments at all levels and the people's court is no legal basis for dealing with such disputes, it makes many long-term environmental disputes not properly resolved, resulting in many of the environmental pollution leapfrog petition, the sit-in events. Some victims really no way to take the road blocking the sewage plant, closed the door of the sewage enterprises, the destruction of plant machinery and equipment, and wind up power and other non-legal means to solve the problem (WANG, 2003). The case has provoked in public environmental awareness of environmental safety, concern for environmental protection has become a reality. Protest environmental disputes handled many are taken outside the system, it is worth us to consider the protest outside this system must be a shock

to social order, and then, by the institutionalized system of public participate in guided environmental administrative system of the booster is better.

The environment the dispute inevitably need appropriate dispute settlement mechanism to resolve quell, in order to maintain a stable social order. It has a mechanism for public participation in the environmental public interest litigation system can be transformed into a system of public protest institutional participation, environmental administrative enforcement help. This avoided the widespread dissatisfaction in society, free from the intensification of social contradictions. A society will always need an authoritative, impartial mechanism to solve social problems. Environmental public interest litigation system provides a guide public participation within the system of channels, through the completion of the internalization of environmental administrative law enforcement supervision, struggling within the public system.

### **3. THE CONSULTATION MECHANISM ESTABLISHMENT IN THE PUBLIC INTEREST ENVIRONMENTAL LITIGATION**

#### **3.1 The Consultation Mechanism Before Public Interest Environmental Litigation**

The Taiwan scholar Professor Ye Junrong holds environmental public interest litigation system aims to make use of private environmental forces to supervise the environmental enforcement bring positive enforcement and compliance with the law of power, due to the possibility of citizens to sue on the competent authorities and polluters, so the system caused by the presence of active enforcement and compliance with the law should be the main basis to assess its effectiveness (YE, 2003, p. 240). It is worth noting that as long as there is the possibility of citizens to sue enough actuation environmental administrative authorities to actively enforce the law, sufficient to allow polluters to take the initiative to correct environmental violations or the commitment to take on the basis of the correction of environmental law measures to take the initiative to reach a settlement with the person to what the notice is. To achieve the purpose of the environmental public interest litigation system, it does not go through a public interest litigation necessary, only need the public to keep the possibility to bring environmental public interest litigation.

U.S. Environmental Citizen Suits in the nature of environmental public interest litigation system, its system of citizens filed a citizen suit set a pre-procedure, environmental organizations or private plaintiff must, before filing a lawsuit, the writing of the "prosecution notice of intent" the offenders sent advocated, and the

federal and state governments, at least 60 days from the date of a notice of the prosecution, the prosecutor before the courts (LI, 2007, pp. 97-98). 60 days' notice before litigation procedures on the one hand allows the government to decide whether the initiative law enforcement or to the court to prosecute polluters, on the other hand can play the function of the non-litigation dispute resolution mechanism, so that the parties have the opportunity to pre-litigation negotiations and reconciliation, thus eliminating the need for litigation, reduce the burden on the court. "Sixty days added to inform the terms of the desire of the people involved in law enforcement and the principle of executive-led law enforcement to be reasonable to reconcile not only smooth the enforcement procedures, and also provide strong theoretical foundation for the system itself so, if the said obligation to inform citizens essence of the litigation should not be too much (YE, 2003, p. 232)." It is because the public bring environmental public interest litigation, this pre-litigation notice procedures played a role actuation environmental administrative enforcement, also can play the role of non-litigation dispute resolution mechanism.

Considering United States 60 days notice, we can learn in the Environmental Public Interest Litigation System Construction pre-procedure requires a lawsuit, the pre-program settings to provide the conditions for the full realization of the consultation mechanism, and its specific performance for reconciliation after 60 days' notice.

Action settlement is divided into the two kinds of reconciliation and litigation proceedings, the United States 60 days after the pre-litigation notice reconciliation should be reconciliation litigation (TANG & SHAN, 1997, p. 30). "Besides a settlement in the lawsuit, as the name suggests the parties in the litigation, the private mutual negotiate the digestion disputes, and to reach agreement." Litigation reconciliation features the following points: First, a settlement just outside the litigation parties, and without the involvement of a third party; Second, both parties can reach an agreement freely negotiated on the basic; Finally, litigation reconciliation is consensual parties in private law, a contract. Therefore, after the establishment of the litigation settlement agreement, only the validity of the contract, the settlement agreement is not enforceable.

Environmental public interest litigation cases related to the public interest of the environment, but the civil litigation system in the United States is still closed through reconciliation, civil litigation prosecution the notice issued prosecute the offender proceedings to the court, and the vast majority of cases finally reached reconciliation.

China Environmental Law Professor Lu Zhongmei thinks it should not be involved in any private interest, because once private interest disputes the significance of the demonstration and policy objectives of the environmental public interest litigation admit it is difficult to get the others, the government and even the Court.

The only case does not involve any private interest, may reduce the tightness interests to be considered in the environmental public interest litigation associated simultaneously prevent the guise of environmental public interest litigation and economic compensation for the abuse v. phenomenon, so filed environmental public interest litigation only out corrective actions and behavior, the purpose of prevention, compensation for maintenance rather than the private interest of the public welfare as the target (LU, 2008). As Professor Lu Zhongmei maintained, involved in environmental public interest litigation is harmful to both private and public welfare of the possible. But lawsuits from the environmental point of view, because environmental disputes with professional, highly technical nature of the identified difficulties, the adverse impact of the pollution of water, air quality, and the plaintiff in the court requires a certain amount of the cost of litigation greatly increased litigation also need to put in more effort and time, and then the effect of the implementation of the Court's final judgment is worth considering factors based on these considerations, the prosecutor and the offender reached in the proceedings before the possibility of reconciliation. Of course, if there is the involvement of the private interest may be harmful to the maintenance of public welfare Moreover, the prosecution bribed suspects the existence of the settlement agreement reached when the polluter pay a certain sum of money to prosecute people.

### 3.2 The Justice of Consultation Mechanism in Environmental Public Interest Litigation

Environmental Public Interest Litigation and Environment private interest litigation have different purposes. In a word, the environmental public interest litigation is plaintiffs as citizens or environmental groups, its litigation purposes "private for charity", which is positioned in the public interest on environmental litigation; environment private interest litigation purposes as "private is private interest", which environmental litigation position in the private interest. Of course, the environment, public and private interest is not distinct dichotomy Environmental Public protection will not only help promote the development of personal private interest, and this is an extremely important way of private interest; private interest maintenance in the environment indirectly affects environmental public interest.

For the environmental civil action in the private interest litigation, the parties can be reconciliation in the proceedings, and the court mediation also. Environmental administrative proceedings for mediation, which is defined in section 50 code of the *Administrative Procedure Law of the People's Republic of China*. It can be said that environmental civil action can negotiate to resolve environmental disputes, environmental administrative proceedings to the provisions of the existing law could not be resolved through consultation, and the attitude

of the specific administrative act that requires judicial organs must articulate support or against identified the administrative organs of the behavior of what is legal or illegal. In environmental public interest litigation, whether consultation, whether the conclusion of the case is to explore the way of settlement or mediation.

To figure out whether consultation mechanism in environmental public interest litigation in theory, we need to be proven why environmental civil action permitted conciliation, mediation and negotiation mechanism, environmental administrative proceedings are not allowed to mediation. The environmental Civil Procedure had agreed to mediation exist because the environmental civil action court referee disputes between equal entities, the key is that the parties have their own interests disposition. The reason why the administrative proceedings in the trial not allow the existence of mediation is based on such considerations: First, the administrative litigation system of legal supervision. Administrative proceedings in the administrative system of legal supervision, legal supervision system is an indispensable afterwards, is an important part of the national system of legal supervision, and its main function is to monitor the executive branch and the national organization authorized by law to exercise their functions and powers according to law. The subject of proceedings entity on the disposition of the existence of the mediation premise, the executive power of state power, the executive authorities only exercise the duties of state power, and no right to freely dispose of state power. Second, environmental administrative lawsuit is a direct relative of the environmental administration litigation, administrative proceedings review the legality of specific administrative act, when the court found that the respondent's specific administrative act in violation of the law or identified illegal facts are unclear national jurisdictions can use to revoke illegal specific administrative act, or instruct the executive authorities to re-make the specific administrative act, and the specific administrative act is either legal or illegal, there is no third possibility, and thus no need for mediation. Because there are a lot of our trial practice the normal withdrawal as well as the name of coordination, consultation substance for mediation concluded fact, therefore, theoretically for environmental administrative proceedings, should create a mediation system controversy.

Environment Civil Procedure allows mediation in environmental administrative proceedings are not allowed to mediation. The main difference lies in whether the parties have the right to dispose of, if disposition can negotiate; if not there would be no space for negotiation. Discuss environmental public interest litigation consultation mechanisms exist in space, depends on whether the parties have the right to dispose of to decide? This paper argues that is not the case, because there are essentially different environmental public interest litigation environment between the private interest litigation.

Environmental Public Interest Litigation reason why private interest litigation in nature and the environment there is a difference, that is, because there are fundamental differences between the parties on both institutional setting purposes. Any litigation system studies are needed to explore its specific purpose. This paper argues that the legislators by building environmental public interest litigation system subjective expectations of the public can have more opportunities to enter the court (WANG, 2008), its precondition is not government agencies or indolent in the implementation of the law by the public instead of the public in order to promote the implementation of environmental laws. The power to enforce laws, and the public for violations filed public interest litigation. So that the objective to make up for the shortcomings of the government to implement the law, to promote the implementation of environmental laws in order to protect the environment, the public interest purposes, simply put, is to seek judicial protection for the environment and public interests. With very different environment private interest litigation purposes, private interest litigation to case of aggrieved own interests, to seek judicial relief the interests of the private litigation system is stressed on the position, only those who are against their own interests are emphasized to obtain judicial relief. It proceeds in order to safeguard the private interest of the individual.

Since the purpose of the environmental public interest litigation is to safeguard the public interest in the environment, objectively, and then the plaintiff with the defendant reach a negotiated settlement or mediation concluded under the auspices of the court is a controversial issue. Negotiation mechanism against environmental public interest litigation view that the plaintiff is not able to represent the public interest, and therefore not have the right to dispose and be negotiated in the process, only to obey the court's decision. This paper argues that the problem lies in public is in the public interest filed public litigation, but that does not mean the public's own environmental enforcement.

In other words public just actuation government to enforce the law, in this sense, whether the public has a fairly representative of the interests of not interfere with their proceedings, at the same time as the plaintiff in consultation with the offender does not prevent environmental public interest litigation purposes reached through litigation itself has prompted the polluter or the relevant government organs to correct their illegal activities, then, based on a court decision closed or through litigation the settlement closed and there is no difference. Therefore, the idea that the public does not have the appropriate representative capacity cannot be negotiated.

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