

Function Optimization and Regulation of Relevant Organs in Environmental Administrative Public Interest Litigation

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Abstract: Environmental administrative public interest litigation refers to a system in which the procuratorate may take measures to file an administrative lawsuit with the court to protect the environmental public interest when the environmental public interest is infringed upon or is likely to be infringed by a specific administrative act of an administrative agency. At present, the number of environmental administrative public interest litigation cases in China has shown the characteristics of blowout growth, but there are also many problems to be solved behind this growth. In the pre litigation procedure, the content of the procuratorial recommendations of the procuratorial organ is inappropriate, so the content of the procuratorial recommendations should be optimized to ensure its details and Appropriateness; In the process of litigation, the procuratorial organ has a tendency of self-interest, which damages the fairness of justice, so it should take some regulatory measures. On the other hand, the court has the problem of generalizing the content of the judgment, which needs to be clarified in detail; In the implementation process, the procuratorial organs' supervision over the implementation of administrative organs is insufficient.

Keywords: State Organs; Environmental Administrative Public Interest Litigation; Functional Optimization; Regulation

1. Introduction

At present, the environmental administrative public interest litigation system implemented in China is an extremely necessary system design in the process of promoting the modernization of the national governance system and governance capacity in the field of ecological environment. It is an innovation in the field of the traditional judicial system in

the past and an indispensable existence in the field of maintaining ecological civilization. However, the system still has problems in many aspects and needs to be improved and maintained in the process of future implementation.

2. Problems and Optimization of Relevant Organs in Pre Litigation Procedure

2.1 The Content of the Procuratorial Organ's Pre Litigation Procuratorial Recommendations is Inappropriate

In practice, the pre litigation procedure is highly valued. In the pre litigation procedure, the procuratorial organs often use the way of making and issuing procuratorial suggestions to supervise the administrative organs and urge them to perform their duties or correct their ways of performing their duties, which often plays an effective role. In the current related work, there is a problem that the content of this method is not standardized, that is, there is no certain standard in detail. At present, China's laws, administrative regulations and judicial interpretations are vague [1], which leads to that the suggestions of the procuratorial organs are sometimes difficult to guide the administrative organs to improve the way of performing their duties. At present, Article 16 of the provisions on procuratorial recommendations issued by the Supreme People's Procuratorate does list procuratorial recommendations in general, but these Provisions are only guiding provisions, that is, "clear and specific, fully reasoned, rigorous argumentation, concise language and operability". However, the specific content of the recommendations should include what content, and there is no mandatory recommendation requirements for procuratorial organs in this regard. Therefore, in practice, there are sometimes suggestions that are vague or too detailed to be suspected of "order", so that the content of procuratorial

recommendations is not operable.[2]

For example, in the administrative public interest litigation case of Xinghua people's Procuratorate in Jiangsu Province urging the protection of the ecological environment of Dazhong Lake wetland, the procuratorial proposal of Xinghua people's Procuratorate is to urge the fulfillment of wetland protection duties according to law. The proposal is a typical general proposal, which has fuzzy and abstract problems, so that the administrative organs can not solve the problems, but also weaken the supervision attribute of the procuratorial organs in this field.

In the case of failure to perform their duties in accordance with the law, the local procuratorial organ issued procuratorial suggestions to the agricultural and Water Bureau of Fengze District, Fujian Province, which required them to strictly perform their duties of wetland resources and environmental protection in accordance with the law, immediately investigate and deal with the illegal acts of fishermen and impose administrative penalties such as fines and orders to restore the status quo ante. This kind of over detailed procuratorial advice will affect the subjective initiative of the administrative organs and hinder them from making administrative acts. At the same time, it is possible for the judicial organs to interfere with the administrative power, which violates the principle of modesty of the judicial organs. Therefore, how to make the procuratorial suggestions detailed and appropriate, and play a reasonable guiding role for the administrative organs, is a problem that needs attention.

2.2 Optimization Measures of Relevant Authorities in Pre Litigation Procedure

Procuratorial recommendations should be detailed and sketchy, which is the core of its content optimization. Too vague or too detailed is not conducive to the administrative organs' performance of their environmental protection responsibilities. Therefore, the procuratorial organs should try their best to improve the persuasiveness in the content of procuratorial suggestions, such as the detailed description of environmental damage, the actual situation of administrative organs' performance of duties, and the causal relationship between damage and

administrative organs' behavior, so as to improve the persuasiveness of the suggestions, let the administrative organs understand the problems, and also help them better improve their behavior and make further improvement and adjustment.

At the same time, the procuratorial organ should avoid interfering with the means, measures, punishment and other contents of the administrative organ as much as possible in the proposal, and the administrative organ should play an independent and active role in relevant environmental issues based on its own experience and expertise as much as possible. We should not only consider the general principles and basic principles of administrative litigation, but also fully consider the functional characteristics and operation rules of procuratorial organs.[3] On the one hand, the relevant administrative organs have more professional attributes in dealing with environmental affairs than procuratorial organs, and can solve more complex environmental problems based on specific circumstances; On the other hand, as a judicial organ, the procuratorial organ should not interfere too much with the implementation of administrative power, otherwise it will be suspected of exceeding its authority.

3. Problems and Optimization of Relevant Organs in Litigation Procedure

3.1 Procuratorial Organs Have a Tendency of Self-Interest

Compared with the general people, organizations or other state organs, the procuratorial organ, as the legal supervision organ stipulated in the constitution, has congenital advantages in bringing environmental administrative public interest litigation, so it has become the only subject of the litigation. The prerequisite for the court to start the trial procedure of environmental administrative public interest litigation is that the procuratorial organ initiates such litigation, which plays a normalized role in the supervision of the administrative organ to perform the responsibility of ecological protection.

However, as the only subject in this field, the procuratorial organ will inevitably affect its impartiality and make non objective litigation

activities based on its own interests when filing environmental administrative public interest litigation. After the reform of the supervision system, the procuratorial organ has transferred the function of investigating and handling job-related crimes to the supervisory organ, which has greatly changed its function, so that the procuratorial organ has to pay attention to public interest litigation and play its function. For this reason, when the procuratorial organs weaken their power, they need to take some measures to maintain their position in the national legal rights structure system. These measures can be seen from the number of administrative public interest litigation cases filed in China in recent years. The number exceeded 100000 in 2018, and rose to 150000 only two years later. As a supervisory organ, the procuratorial organ should take the practice of maintaining its own power by filing a case. However, if excessive litigation is brought against the performance of duties of the administrative organ, it will not be conducive to the management and improvement of environmental issues by the administrative organ in relevant fields, and will attack the enthusiasm of the administrative organ to maintain the ecological environment, which is contrary to the original purpose and purpose of the establishment of environmental administrative public interest litigation, and may even cause the confusion of the roles of judicial power and administrative power.[4]

3.2 The Content of the Court Decision is Relatively General

The environmental administrative public interest litigation is a judicial supervision measure for the relevant acts of the administrative organs that maintain the ecological environment. If the pre litigation procedure is a proposal for the administrative organs' failure to perform their duties or illegal performance of their duties in the protection of the environment, the litigation procedure is a mandatory order made by the judicial authority after the proposal is invalid. Therefore, the judgment of the court on the administrative organs in the environmental administrative public interest litigation should be different from the procuratorial suggestions of the procuratorial organs.

However, the current judgment of

environmental administrative public interest litigation is often based on the judgment of confirming that the administrative organ violates the law and performs its duties. The complexity of environmental issues makes the content of many courts' decisions more general, that is, the excessive principle of the situation, which makes the court's decisions often become a mere formality. General administrative litigation is to resolve disputes arising from administrative acts, as is environmental administrative public interest litigation, and to urge administrative organs to perform their regulatory duties.[5] It is often difficult to solve problems only by confirming that administrative organs violate the law, and it is even suspected of consuming judicial resources. In practice, even if the court considers that the administrative acts of the relevant administrative organs perform their duties in violation of the law, it often can only order the administrative organs to continue to perform their duties related to ecological and environmental protection, but it will not involve specific issues such as how to improve the content of the performance. Finally, the illegal administrative organs continue to govern, which cannot play the original role of legal supervision.

3.3 Optimization Measures of Relevant Organs in Litigation Proceedings

3.3.1 Regulating the power of procuratorial organs

The solution to the problem of the procuratorial organ is essentially to solve the problem of the abuse of the procuratorial organ's supervision power, that is, how to regulate its power to a certain extent. First of all, we should limit the prosecution elements of environmental administrative public interest litigation. At present, the prosecution conditions of environmental administrative public interest litigation in China are relatively loose, that is, when the administrative organ violates the law and the public interest is damaged, the procuratorial organ can file administrative public interest litigation. As for the element of "damage to public interests", it can be determined as factual damage, that is, it needs the objective fact of damage. For possible damage, it only needs to be reminded by inspection and suggestions, and there is no need to rise to the height of litigation.

Secondly, the procuratorial organs should respect the administrative power which belongs to the same state power. For example, the procuratorial organ should respect the first jurisdiction of the environmental administrative organ. As the main body of administrative power, the environmental administrative organ has the boundary of power distribution with the procuratorial organ. The administrative organs in this field have been authorized by law to maintain the power and responsibility of the regional environment, and can make corresponding judgments and make certain administrative acts according to their professional ability and information, which can include both acts and omissions. For the above-mentioned first jurisdiction of the administrative organ, the procuratorial organ should postpone the supervision to a certain extent. Only after the administrative organ has made its administrative act, the procuratorial organ can bring an environmental administrative public interest litigation against it.

Finally, the procuratorial organ should maintain the principle of modesty, which is the principle guarantee to prevent the abuse of its power and an important feature of judicial power. However, as the plaintiff of environmental administrative public interest litigation, the procuratorial organ can actively collect evidence, which makes it very easy to break through the regulation of the principle of modesty and exert a strong pressure on the administrative organ. Therefore, the procuratorial organ should adhere to the principle of modesty in many aspects. For example, its litigation request to the people's court should put forward relevant contents in combination with the level and experience of local environmental administrative organs' law enforcement, so as to avoid the situation that excessive requirements would interfere with the exercise of political power in advance.

3.3.2 The court specified the content of the judgment in detail

In the practice of environmental administrative public interest litigation, the court often finds that an administrative act is illegal after review, and makes a judgment confirming or revoking the original act, unable to make a specific performance judgment, which often fails to play the supervisory role of judicial organs. Therefore, it is particularly important to clarify

the content and standard of judgment performance for improving the judgment of the people's court in environmental administrative public interest litigation. For the former, the people's court shall, in its judgment, comprehensively determine the measures to be taken by the administrative organ after the administrative organ changes the administrative act or re conducts the administrative act according to the specific situation of environmental pollution and the effect of the administrative act adopted by the relevant administrative organ, and according to the investigation results of the procuratorial organ, and put forward relevant requirements. For the latter, the length of the performance period is also of great guiding significance for the administrative organ to perform its duties. Therefore, the people's court should make a comprehensive consideration based on the emergency of environmental damage, the complexity of the performance, and the administrative capacity of the defendant's area, so as to determine a certain reasonable period. It is not allowed to blindly make vague and non guiding contents in the judgment due to respect for the first jurisdiction of the administrative organ.

4. Problems and Optimization of Relevant Organs in the Implementation Procedure

4.1 The Enforcement and Supervision of Administrative Organs is Not Strong

In addition to the trial stage, there is also the execution stage in the important stage of the litigation process. As an important stage of the implementation of judicial power, the execution stage often gets less attention than the trial stage. "At present, the making, method, content and other aspects of the judgment related to the performance of environmental administrative public interest litigation in relevant laws and regulations are relatively rough"[6], but this is an important content of whether the environmental public interest litigation can be truly applied to protect the environment and ecology. "Execution, as one of the important stages of litigation, is related to the effective implementation of the judgment".[7] Implementation can achieve the purpose of resolving disputes and contradictions. The same is true of environmental administrative

public interest litigation. The system is established to safeguard the public interests of the society, not just to win the lawsuit. Therefore, how to ensure that the content after the judgment can be effectively implemented, so that the system can play a fundamental role in protecting environmental public welfare, is a key issue that needs attention. At present, China divides different environmental protection functions into ministries and commissions according to business differences; On the other hand, through the division of administrative regions, the environmental protection supervision of a region is uniformly managed by the local government of the region, and a new mode of "segmentation" is established.[8]

However, at present, there are no detailed provisions in the relevant laws and documents on how to supervise the administrative organs in the implementation stage, so as to urge the relevant environmental departments after litigation to complete their duties according to the judgment, so as to improve the performance effect. From the current situation of judicial enforcement in recent years, it is faced with the dilemma of lack of professionalism in many aspects, such as ecological environment restoration.[9] In practice, after the judgment, the procuratorial organ still supervises the implementation of the judgment, but this supervision effect is not strong, because there is no more specific and detailed implementation method. Therefore, in the environmental administrative public interest litigation, on the one hand, the content of the judgment of the people's court is relatively vague, on the other hand, there is a lack of reasonable implementation and supervision measures and organs after the judgment. The combination of the two unfavorable elements has played a more negative effect on the continuous performance and improvement of the administrative organs, making it impossible for the administrative organs to make a reasonable and scientific assessment of the time and extent of their own implementation. But it is this "last mile" that determines whether the system can play a positive role.

4.2 Optimization of Relevant Authorities in the Implementation Procedure

In order to promote the implementation of

ecological resources protection measures, the procuratorial organ should continue to play an important role in it, supervise the implementation of the judgment, and let the system play a substantive role. This is determined by the nature of the procuratorial organ itself, because in the environmental administrative public interest litigation, the procuratorial organ is complex, which is not only the supervisory organ, but also the public interest litigant, so the implementation of supervision is its own responsibility.

First of all, relevant judicial interpretations should be issued to provide reference and basis for the supervision of procuratorial organs in the implementation stage. The supervision power of the procuratorial organs in China is often concentrated in the litigation stage, which supervises the administrative organs through legal proceedings. However, the relevant legal provisions on the content of continuing supervision are still slightly thin, resulting in the restriction of the implementation supervision in the judicial practice in the ecological environment, which is in urgent need of a set of appropriate supporting provisions. Therefore, the supreme law and the Supreme Procuratorate can summarize the problems and situations in the implementation process according to the practice of environmental administrative public interest litigation in recent years, and formulate detailed provisions for the supervision and implementation function of the procuratorial organ to provide protection.

Secondly, strengthen the cooperation and linkage between procuratorial organs and administrative organs, and form a joint force at the implementation level. The simple victory or defeat is by no means the fundamental purpose and purpose of environmental administrative public interest litigation. Therefore, the relationship between the two organs should not be just a unilateral supervision and supervised relationship. In the implementation phase, the two sides can achieve strong cooperation and form an environmental protection pattern of co construction, CO governance and sharing by sharing information, resources and other means, or by returning visits at fixed points and at fixed times when certain steps are completed.[10] At present, some regions in China have begun to explore relevant practices

in practice and applied them in practice. For example, the people's Court of Longlin Ethnic Autonomous County in Guangxi Zhuang Autonomous Region has established a "1+n" linkage mechanism for judicial protection of the ecological environment, strengthened the linkage mechanism between multiple departments, and achieved the fundamental purpose of protecting the ecological environment through cooperation.

5. Conclusion

In the new era, China has established a number of systems in environmental protection to fundamentally protect the ecological environment from the top-level design. At the same time, the environmental public interest litigation has played an indispensable role in the protection activities in this field. However, as an important subject of environmental protection, the state organs are marginalized in the process of environmental public interest litigation. Therefore, how to take measures to optimize the role of some organs in the process of environmental public interest litigation is particularly important. The status and role of state organs in environmental public interest litigation is a complex issue involving many aspects. The research and suggestions in this regard are still insufficient and immature, in order to continue to think deeply and carry out relevant research in the future.

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