

The Plaintiff Qualification on Environmental Public Litigation of Village Committee in China

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Abstract : The establishment of the environmental protection law reflects the Chinese government's determination to achieve ecological civilization. Since January 1, 2015, when the revised Environmental Protection Law of the People's Republic of China came into effect, environmental public interest litigation in China has been rapidly growing. In the implementation of environmental law, environmental public interest litigation plays an irreplaceable role. The mechanism of environmental public interest litigation will ideally enhance the effectiveness and prevention of environmental protection and become a major contributor to public awareness of environmental protection. Despite the fact that environmental public interest litigation in China has made great progress, there are still many shortcomings and defects. One of the major difficulties facing environmental public interest litigation in China is the lack of standing of plaintiffs in environmental public interest litigation. This paper will explore the necessity of plaintiff status for environmental public interest litigation in China's grassroots self-governance organizations based on the situation of environmental pollution in rural China, using village committees as an example.

Keywords: Environmental Public Litigation, Plaintiff Qualification, Village Committee, self-governance organization

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1. Introduction

With the development of China's economy, a series of environmental problems have emerged in the process of economic development. The Party Central Committee, with Xi Jinping at its core, has been prioritizing the construction of ecological civilization since the 18th Party Congress. General Secretary Xi Jinping proposed that " Ecological environmental protection and economic development are dialectical unity and complementary relationship. The construction of ecological civilization and the promotion of green, low-carbon and cyclic development can not only meet the growing needs of the people for a superior ecological environment, but also contribute to the realization of higher quality, more efficient, fairer, more sustainable and safer development. Take a civilized development path of production development, affluent living and good ecology".

Under the leadership of the Party, Chinese law related to environmental protection have been continuously innovated and expanded in the field. Comparing the Ecological Environment Bulletin issued by the Ministry of Ecology and Environment of the People's Republic of China in the past 5 years, it can be seen that China's urban environment has been greatly improved in terms of air quality, water pollution, and land pollution. Take air quality as an example, the data of the Ministry of Ecology and Environment's bulletin in 2015 showed that of 338 prefecture-level and above cities nationwide, 73 cities, which is 21.6%, met the air quality standards; 265 cities, the ratio is 78.4%, exceeded the ambient air quality standards; while the Ecological Environment Bulletin 2020 released by the Ministry of Ecology and Environment of the People's Republic of China on May 26, 2021, showed that of 337 prefecture-level and Among the cities above the prefecture level, 202 cities met the air quality standards, accounting for 59.9% of all cities; 135 cities exceeded the air quality standards, accounting for 40. 1%; compared to 2015, the number of

cities meeting the air quality standards increased by 129. The data shows that a series of environmental protection actions in China during these five years have achieved great results.^{5) 6)}

As the urban environment has been improved and achieved great results, the environmental issues in rural areas have been getting increasingly serious. There are three main reasons for the growing seriousness of the rural environment. First, all rural industries have shifted from traditional to modern methods. Under this transformation, the rural economy has developed rapidly, but it has also created a series of environmental pollution problems. Second, due to the reform policy of urban environment, many factories that cause pollution are gradually moved from cities to villages. Third, because the government focuses on the protection and improvement of the urban environment, whereas the investment and attention to rural environmental protection are insufficient. This has led to a series of environmental problems brought about by the rapid development of the rural economy that has not been dealt with in a timely and appropriate manner. Problems such as improper disposal of various types of garbage and direct discharge of discharged sewage without professional treatment have led to increasingly serious pollution problems of rural air, soil and water, which have adversely affected the health of local villagers and their living environment.

China has proposed a series of regulations and measures to protect the environment in the countryside in an attempt to address the serious environmental pollution in the countryside. However, compared with urban areas, the investment in environmental protection measures in rural areas is still relatively weak. In terms of supervision of environmental pollution in rural

5) Ministry of Ecology and Environment of the People's Republic of China: 2015 The State of the Environment Buletin, 中华人民共和国生态环境部《2015 中国环境公报》

6) Ministry of Ecology and Environment of the People's Republic of China: 2020 The State of the Environment Buletin 中华人民共和国生态环境部《2020 中国环境状况公报》

areas by governmental agencies and environmental public interest litigation in rural areas, the seriousness of environmental pollution in rural areas in China is not proportional to the strength of environmental protection. Based on this, it is necessary to strengthen the supervision of environmental pollution in rural areas by government agencies, as well as to vigorously promote environmental public interest litigation in rural areas. Environmental public interest litigation is very necessary to improve the legal protection of rural ecological environment.⁷⁾

2. Status of environmental public interest litigation

2.1 Current status of legislation

In China, both substantive and procedural laws provide for the eligibility of plaintiffs in environmental public interest litigation. In terms of substantive law, the law clearly stipulates that any social organization which is registered with the civil affairs department of the people's government at or above the district level and which has been engaged in public interest activities for environmental protection for at least five consecutive years without any illegal record may initiate public interest litigation. Article 58 of the Environmental Protection Law provides more detailed provisions for social organizations to file environmental public interest litigation: "Social organizations that pollute the environment, damage the ecology and harm the public interest may file lawsuits with the people's courts if they meet the following conditions: (i) Registered in the civil affairs department of the people's government at or above the municipal level according to law. (ii) Specialized in environmental protection public welfare activities for more than five consecutive years and no illegal records. In accordance with the preceding paragraph of the social

7) Chang, T. Zhai & Y.C., 'Standing of Environmental Public-Interest Litigants in China: Evolution, Obstacles and Solutions' (2018) 30(3) Journal of Environmental Law, pp. 369-97, at 389Google Scholar.

organizations to the people's court, the people's court shall accept the lawsuit. The social organization bringing the lawsuit shall not make financial gain through the lawsuit." This provision is a major progress in China's environmental public interest litigation, which allows non-governmental organizations to be qualified as plaintiffs in environmental public interest litigation.

In terms of procedural law, the Civil Procedure Law on the conditions for the prosecution: "The plaintiff is a citizen, legal person, and other organizations that have a direct interest in the case." and Article 55 of the Civil Procedure Law: " For actions that pollute the environment, infringe on the rights and interests of many consumers and other acts that harm the public interest of society, the relevant authorities and social organizations can initiate litigation in the people's courts." As well as Article 2 of the Administrative Litigation Law: "Citizens, legal persons or other organizations who believe that the specific administrative acts of administrative organs or staff of administrative organs infringe upon their lawful rights and interests shall have the right to file lawsuits in the people's courts in accordance with this Law." These legal provisions have further restricted the eligibility of the plaintiff in environmental public interest litigation.

2.2 Current state of judicial practice

Not just any individual or organization can bring an environmental public interest lawsuit, but only if the plaintiff meets the requirements of the law. In judicial practice, there are four types of environmental public interest litigation:(1) The environmental public interest litigation case initiated by the Procuratorate. (2)Environmental public interest litigation initiated by social welfare organizations (NGOs). (3) Environmental public interest litigation cases initiated by citizens as plaintiffs. (4) Environmental public interest litigation initiated by the environmental resource authority. Among these four types,

there have been relatively more environmental public interest litigation cases filed by procuratorates and social welfare organizations in recent years.

However, regardless of the type of environmental public interest litigation filed, there are very few related to rural environmental pollution. This also reflects the fact that the organizations that can bring environmental public interest litigation in China are currently not paying much attention to rural areas so that environmental public interest litigation is an unfamiliar way for rural collective organizations to protect the environment. In fact, there are examples of village committees bringing environmental public interest litigation in judicial practice. However, since the village committee is not a plaintiff under the law, most of the time, the court will not accept the environmental public interest litigation cases filed by the village committee.

A total of 3,411 related documents were retrieved from China Judicial Documents Online for environmental infringement cases with decision dates ranging from January 1, 2010, to November 27, 2021. When the plaintiff was limited to the village committee, only 6 relevant documents were retrieved, including the second trial decision documents. It can be seen that there are very few cases in which the village committee is the plaintiff of environmental public interest litigation. This is not because there are few such cases in practice, but that the village committee is not an eligible plaintiff subject for environmental public interest litigation in China. As a result, many cases are not accepted directly, so only very few cases of relevant decisions can be retrieve.

According to the legislation, village committees, the subjects eligible to file environmental public interest lawsuits in court, do not pay much attention to the environmental pollution situation in rural areas. And as the grassroots self-government organizations who always care about the rural environmental pollution situation, they are not eligible subjects for environmental public

interest litigation plaintiffs under Chinese law. This makes environmental public interest litigation such a powerful way to protect the environment in rural areas does not play its benefits.⁸⁾

3. The Practical Difficulties Faced by Village Committees in Becoming The Subject of Environmental Public Interest Litigation

3.1 The current situation of environmental public interest litigation brought by village committees in China

As the Chinese rapid economic development, China is experiencing an unprecedented crisis- environmental pollution and ecological damage. Environmental civil public interest litigation deals with work environmental management issues with the overall development interests of the ecological and economic environment at its core and through the integrated use of a variety of tools. There is no doubt that environmental public interest litigation is a powerful tool for protecting the ecological environment. Both domestic and foreign environmental public interest litigation has contributed a lot to environmental protection. Based on the current environmental pollution situation in rural China, environmental public interest litigation is highly needed to help improve and protect the rural ecological environment.

According to the relevant data, from July 2017 to June 2021, there were a total of 19,695 public interest litigation cases, including 2,336 administrative public interest litigation cases, 17,356 civil public interest litigation cases (including 15,320 criminal incidental civil public interest litigation cases). From the scope of dispersion, there were 14, 175 cases about the ecological environment, and resource protection, accounting for 71.97%. There were 4186 cases on food and drug safety, accounting for 21.25%. There were 586 cases for

8) Faure, M. & Raja, A.V., 'Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables' (2010) 21(2) Fordham Environmental Law Review, pp. 239-94, at 293Google Scholar

state-owned property protection, state-owned land-use rights transfer. There were also 45 cases about protection of the rights and interests of martyrs, and 634 cases of other types.

To sum up, by introducing the relevant provisions of civil environmental public interest litigation, China's environmental public interest litigation system has been enhanced to a new level. Meanwhile, with the increasing number of public interest litigation cases, the loopholes in China's public interest litigation are gradually revealed.

3.2 The village committee becomes the main subject of environmental public interest litigation reality hindrance

3.2.1 The legal basis is not clear

Despite the legislative breakthroughs in environmental public interest litigation in China, it is still not in line with the needs of environmental protection at this stage in terms of the scope of subject matter qualification. Presently, one of the major challenges faced by rural environmental public interest litigation is the lack of plaintiff qualification. At this stage, among the subjects that can initiate environmental public interest litigation, the village committee is not a qualified plaintiff under the law.

First of all, both procedural law and substantive law in China have many provisions and restrictions on the eligibility of plaintiffs in environmental public interest litigation. The scope of the plaintiff's eligibility for environmental public interest litigation is the primary issue that needs to be resolved in order to develop environmental public interest litigation in rural areas. The author argues that the purpose of environmental public interest litigation is to encourage individuals or social organizations to contribute to the protection of the ecological environment. The law should not be too restrictive on the plaintiff's qualifications to file environmental civil public interest litigation.

Moreover, the purpose of environmental public interest litigation is to protect the environment and punish the acts of environmental destruction. Hence, in the legislation of environmental public interest litigation, the scope of the plaintiff's eligibility for environmental public interest litigation can be properly expanded within the scope of certain principles and norms. The village committee should be included in the main body of the plaintiff. The law should be clear about their own provisions in order to prevent the actual litigation process due to the provisions of laws and regulations so that the villagers committee as the main body of litigation disqualified.

Secondly, through the amendments made to the Environmental Protection Law, the relevant organizations have been given certain restrictions, that is, civil organizations need to be registered as the subject of public interest litigation. Since the development of registered civil environmental organizations in practice is very sparse, there is no solution to improve the development of the form of civil public interest litigation cases in China for the rural economy. The Environmental Protection Law also prevents village committees from being the subject of their lawsuits by creating restrictive conditions. While there are provisions in the Civil Procedure Law that do not restrict the participation of village committees in litigation, there should be clear provisions in the Environmental Protection Law that define the identity of village committee subjects. Thereby, village committees are given a suitable position for environmental civil public interest litigation.

Third, according to the Organic Law of the Villagers' Committee, it clearly specifies that the rights of the Villagers' Committee come from the permanent residents of the village, and that only after the approval of the permanent residents of the village can the Villagers' Committee participate in the management of the public affairs and public welfare of the village. However, there is no clear provision on whether the village committee is qualified to

participate in the litigation system. To fulfill its duty to provide protection for the villagers when the ecological environment in the village is infringed, the villagers' committee should report to the relevant environmental protection administrative authorities or directly initiate litigation procedures. The Organic Law of Villagers' Committees should provide that villagers' committees may file lawsuits in the people's courts on behalf of the permanent residents of their villages. It not only guarantees the eligibility of villagers' committees as plaintiffs but also restrains the behavior of villagers' committees through the law to prevent their abuse of litigation.

3.2.2 Inadequate litigation procedures

Litigation is the last defense to protect the environment. During this stage, the public economic interest in environmental protection is put in the context of Chinese justice. Through the inspection of the existing jurisprudence, the proceedings in China are faced with two major challenges: high success rate and poor litigation results.

The relatively high success rate is due to the "blessing" of official information data on the one hand, and the compulsion of the social development context on the other. In the pre-litigation procedure, the review criteria of the inspection recommendations are different, and the ecological restoration effect is different, so whether to start the litigation process also needs to be determined according to the actual situation. For example, the short restoration period, the inspection recommendations for ecological restoration effects, and the definition criteria are complex in terms of specific measures. The subject may not be able to complete ecological restoration within the available time due to the difficulty or short period of ecological restoration.

The effect of litigation is not only related to the pre-litigation procedure's procuratorial recommendations, but also associated with the success rate of the pre-litigation procedure. In the pre-litigation procedure, the effect of ecological

restoration is varied due to the different standards of relevant regulations.

For cases where ecological restoration is difficult, the court cannot rely solely on some factors in the judicial decision, such as failed to reach an ecological restoration agreement with the defendant, and the plaintiff failed to reach an ecological restoration agreement with the defendant through negotiation and other procedures to agree on the content, duration and follow-up assessment system of the restoration, and cause poor litigation results.⁹⁾

3.2.3 Lack of litigation protection system

The relaxation of restrictions on the subject of public interest litigation in the Civil Procedure Law is a major research result of the continuous innovation, development, and improvement of the public interest litigation process, marking the formal establishment of public interest litigation in the litigation management system in China. Nevertheless, the provisions of the law on public interest litigation procedures are relatively simple and lack corresponding institutional safeguards. Especially for the villagers' committee, as the subject of environmental civil public interest litigation, they cannot avoid their own defects, that is, they cannot be regarded as ordinary plaintiffs. The rural economic environment for public interest litigation has its own peculiarities.

First, as a rule, the destroyers of the environment in China's villages are often enterprises that promote local productivity development or contribute to the economic development of the village. It is inevitable that enterprises only seek to maximize revenue without considering other factors. The social environment for purification equipment will inevitably cause an increase in the management costs of enterprises, which is largely detrimental to the profit maximization of Chinese enterprises. For this reason, some SMEs disregard the ecological and economic environment and they choose to illegally discharge

9) 论村民委员会 在环境民事公益诉讼中的原告资格[J]. 李丽. 环境保护. 2018, 46(10)

water or harmful gases in the process of production, causing environmental pollution. At present, there are no strict restrictions on corporate social responsibility in China, and there is a lack of multi-faceted guidance.

Second, in the process of economic development, local governments, in pursuit of economic development, may only conduct written audits without field inspections when reviewing the environmental assessment of enterprises. Rural areas are self-educated and managed by villagers, and the land is collectively owned. However, the economic and social development of China is subject to the guidance of the Chinese government, and therefore, the government considers the overall level when choosing the direction of research for the continuous development of the rural market economy under its jurisdiction. Its guidance for the rapid development of the rural economy may not be consistent with the majority opinion of the villagers in their village, resulting in the government's lack of support for their industrial and technological development. In addition, only the Finance Bureau has the authority to supervise the villagers' decision to invest in their village. The difference between the main body of decision-making and the main body of supervision may lead to the failure to detect and prevent rural ecological pollution in a timely manner.

Third, the defendant of rural environmental public interest litigation may be a villager. Under the premise that the environmental pollution caused by the villagers of the village is huge and widespread, the villagers' committee will sue the villagers of the village, which will be influenced by the society of acquaintances like rural areas, and the litigation may become an obstacle. Based on the special nature of rural environmental public interest litigation, villagers' committees face problems in the litigation process such as the defendant's strong economic power and the administrative authorities' lag in exercising their authority, the absence of special remedies, the lack of sufficient financial and human support, and the inability to rely on institutional safeguards

when they encounter obstacles. These have weakened the ability of village committees as plaintiffs.

3.2.4 Lack of litigation incentives

First, the cost of litigation restricts the villagers' committee from taking the initiative. In practice, village committees have limited ability to bear the cost of litigation. The cost of litigation alone is much higher compared to general civil litigation, and the litigation costs of environmental civil public interest litigation are relatively high. In judicial practice, since the plaintiff is a village committee, the high litigation costs are a burden to the non-value generating autonomous organization.

After dismissing the lawsuit, the people's courts have often reduced the financial pressure on villagers' committees by deferring or refunding litigation fees. However, from a theoretical aspect, the essence of public interest litigation is to protect the public interest. From an ethical point of view, the plaintiff subject of public interest litigation is required to fulfill the obligation to protect the public interest, rather than for the purpose of profit. Village committees have very limited financial resources. In practice, although there is a mechanism to reduce or waive litigation costs for environmental public interest litigation, due to divergent perceptions in practice, the eligibility of village committees is often not determined. In addition, there is no compensation mechanism to support the time cost and high cost of evidence for village committees. Under the multiple pressures of time management costs and economic development costs, the initiative of village councils to participate in civil legal proceedings may be weakened if Chinese government do not carry out the corresponding supporting mechanism for the incentive effect of litigation.

Second, the lack of incentive mechanism leads to the inability to effectively restrain the negative reaction of village committees. Village committees are not direct victims of environmental pollution and have no direct stake in it.

As a matter of fact, it is the villagers themselves, not the village committees, who bear the adverse consequences of litigation. Therefore, when the villagers' committee is not responsible or does not perform its duties, there may be dishonesty or lack of active participation of the plaintiff in the litigation.

At this stage, China's social environmental civil public interest litigation lacks an incentive mechanism. The current law does not explicitly provide for punitive damages against infringers through litigation. It is because such compensation is limited, indicating that the positive incentive management mechanism is not aimed at the profit of the plaintiff side of environmental civil public interest litigation. At this stage, the applicable conditions of social organizations in environmental civil public interest litigation have been established, and the qualification of the plaintiff subject has also been established. As a special social organization, the village committee has no corresponding clear qualification restrictions in the law and there is no punishment mechanism for its behavior, so it cannot form an effective constraint in the case of the village committee as the main body of the plaintiff.

3.2.5 Lack of super vision and control mechanism

At the theoretical level, village committees have the natural superiority to bring administrative litigation in civil public interest litigation for rural economic environment. However, in reality, some village committees are negligent in fulfilling their obligations to protect their rights in civil public interest litigation for environmental protection in China's rural development, and have become alienated plaintiff subjects. Some villagers' committees will be the front review work procedures in vain, ignoring the fact that environmental pollution occurred in the village, ignoring the main problems of the environment as well as pollution reflected by the villagers in the village, refusing to fulfill the legal litigation rights obligations to the facts that have developed to constitute social and environmental information infringement.

For some villagers' committees, they do not actively take the initiative to fulfill their responsibilities as plaintiff litigation subjects in the process of litigation activities.

They also do not participate in court hearings and do not care about the process and effects of filing lawsuits, which may lead to slow trials or shelving of corporate cases. There are also villagers' committees that do not distribute the compensation money reasonably and effectively after it is awarded to them, while ignoring the public service nature of the lawsuit. They treat the compensation money as the property of villagers' committees at will for the purpose of private gain. Even worse, some of the constituents of the village committee will profit from it and secretly steal the public property.

Due to the lack of procedural supervision by the villagers' committee, the villagers' committee may violate the law. For example, they may sign land transfer agreements with others without the consent of the villagers' meeting, or authorize villagers to agree to land transfer without careful selection, and endanger the rural environment together with the infringer. The main reason for the above possible alienation of village committees is due to the fact that Chinese laws only stipulate that the Chinese government only has some rights to guide, support, and help village committees, but not the right to supervise them. The supervision and management of the village committee can mainly rely on the democratic social supervision of the villagers, villagers' public opinion supervision, and judicial supervision. As far as these three supervision methods are concerned, they all have certain shortcomings and cannot fully regulate the behavior of village committees in environmental civil public interest litigation.^{10) 11)}

10) 郑贤宇. 我国环境公益诉讼原告主体资格 的完善[J]. 东南学术, 2011(4): 208.

11) 陆晨晨. 我国民事环境公益诉讼主体资格研究. 西部学刊, 2021(22): 62-64.

4. The rationality and practical needs of the Village Committee to become the subject of environmental public interest litigation

4.1 Legitimacy

4.1.1 The legal system provides the qualification of the Village Committee

According to the provisions of Article 2 and Article 8(2) of the Organic Law of the Villager Committee, these two articles clarify the following study: as a grassroots mass self-governing organization, the Village Committee is not an administrative organ, but an autonomous organization, self-managed, self-educated and self-serving by the villagers, and its special characteristics can better bridge China's rural areas and grassroots government, both autonomous and restricted. Elected by the villagers of the village, the villagers can fully participate in the agricultural production and social life of the village through the Village Committee, and thus a high degree of autonomy will come true. Article 101 of the Civil Code of the People's Republic of China stipulates the subject qualification of the Village Committee, which is the precise subject position of the Village Committee in the civil law.

4.1.2 Village Committees actively explore the direction of environmental civil public interest litigation in practice

In judicial practice, Village Committees have expressed recognition of this approach to environmental civil public interest litigation, and the awareness of the committee's rights has gradually strengthened, and most of them will take relevant actions to protect the rights and interests of the villagers when their village environment is infringed. However, people have to admit that the Village Committee's understanding of the law is limited and unprofessional, so it is difficult to effectively bring environmental public interest litigation by the Village Committee alone. The Village Committee themselves are also aware of this problem, and in practice, many rural Village Committees will hire or bring in professionals to work for them, just to improve the standard of the

public interest litigation workforce and enhance the professionalism of the participants in environmental public interest litigation, and thus better serve the interests of the villagers.

Currently, Village Committees should give priority to absorb lawyers, law teachers, law students and other talents in the field of law as agents for plaintiffs in environmental public interest litigation and participate in environmental civil public interest litigation on the road of exploring environmental civil public interest litigation. In detail : First, it is necessary to fully consider the relevant professional and technical knowledge, ecological environmental protection and pollution damage involved in environmental public interest litigation when selecting relevant personnel, and the relevant people need to have certain understandings of civil and administrative law. Second, facilitate the judges' ability to accurately judge the application of expertise and law in cases, especially when hearing major and difficult cases and discussing difficult professional issues by introducing relevant experts and technical support staff. Finally, listen carefully to the relevant professionals' opinions to ensure that the results of fact-finding are in accordance with legal effects, so as to ensure that the environmental civil public interest litigation actively explored by Village Committees in practice is in the right direction.¹²⁾

4.2 Advantage

First, respond quickly. Village Committee is sensitive to environmental pollution in their areas. And villagers are most sensitive to environmental pollution when pollution appears. Environmental pollution's direct victims are the local villagers. Compared with other organizations, the Village Committee can make quick response and initiate legal action according to the information

12) 于华江, 唐俊. 农民环境权保护视角下的乡村环境治理[J]. 中国农业大学学报 (社会科学版), 2012, 29(4): 124-133.

from the villagers, and then reduce the harm and damage of pollution to villagers.

Second, the Village Committee is not only active but also sensitive. The initiation of environmental public interest litigation requires the active participation of grassroots organizations such as Village Committee, because the Village Committee has lots of social and folk information. The villagers is the direct perceivers and participants of environmental change, and play an important role in providing clues, evidences and finding evidence that the environment has been polluted. Establish and sound the reward and punishment mechanism of villagers, publicize, encourage, support and guide villagers to actively provide clues of environmental pollution, enlarge the clue source of environmental public interest litigation. Therefore, this advantage of the Village Committee can be used to further clarify the meaning of the Village Committee joining in the environmental public interest litigation, and improve the relevant provisions about the Village Committee to join in cases, including initiation procedures, prosecution scope, content and methods of support, evidence's review and identification, and legal consequences.¹³⁾

Third, the litigation request is more reasonable. A Village Committee is by nature an organization. It is in a better position than individual villagers to present a claim rationally when bringing a lawsuit to court. In contrast to social organizations and prosecutors, Village Committees can also consider the basic demands of villagers as the help and coordination that actual victims need to receive. From the perspective of personal interest, the Village Committee will ask the defendant to compensate for damages when suing, and the amount of damages will be calculated according to the villager's common value whose interests have been violated to better protect the rights and interests of the violated villagers. From the perspective of public interest, the court can

13) 论村民委员会 在环境民事公益诉讼中的原告资格[J]. 李丽. 环境保护. 2018, 46(10)

adjudicate the claims made by the Village Committee, and these claims can require the defendant to pay compensation, as well as stop infringement, etc., to fundamentally prevent the pollution from happening again.

Therefore, the Village Committee has a strong advantage in terms of promptness, proactivity and reasonableness of claims, and has the right conditions to be the subject of civil public interest litigation for environmental protection.¹⁴⁾

4.3 Demand of The Judicial Practice

4.3.1 In environmental civil litigation, there may be confusion between public interest litigation and private interest litigation

As a plaintiff, the Village Committee can meet the conditions related to the interests of both public interest litigation and private interest litigation. For example, the plaintiff's villages' committee (villagers' group) proposed compensation for damages and restoration, a claim that not only satisfied the plaintiff's rights as a resource owner, but also included an interest in protecting the environmental rights of a wider group of villagers with unspecified rights, which was very reasonable. Such a claim is very common in practice. This right to sue with public interest and private interest is a competition between environmental civil public interest litigation and environmental civil private interest litigation. The division of the same facts into two cases is inefficient and results in a waste of judicial resources due to the differences in nature. Then the village council, as the plaintiff, can avoid repeated prosecution and at the same time avoid conflict with the law.

4.3.2 It is helpful for the People's Court to make a judgment.

In the Supreme Court and the Supreme Prosecutor, the interpretation of

14) Faure, M. & Raja, A.V., 'Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables' (2010) 21(2) Fordham Environmental Law Review, pp. 239-94, at 293 Google Scholar

several issues on the application of law to the prosecution of public interest litigation cases provides that the people's procuratorate found damage to the ecological environment and the protection of resources, environmental civil public interest litigation can be brought. However, if we look at the environmental civil public interest litigation cases accepted by the courts, the vast majority of environmental civil public interest litigation cases filed by procuratorial organs and related social organizations involve air, water and soil pollution. Fewer litigation cases on natural resources protection, such as those involving forests, grasslands, mudflats minerals, forests, etc.

After detailed analysis, pollution in the field of natural resources tends to have a long-term character and is often difficult to detect in the short term, compared to air, water and soil pollution. Many types of environmental pollution are difficult to effectively remedy through the legal means of filing environmental civil public interest litigation against the ecological environment, mainly because of the limited power of the procuratorial organs, the wide range of environmental pollution, the disparity between the profit and loss ratio and other difficulties. With the increasing number of environmental tort cases, the limitations of traditional litigation directly affect the standing of plaintiffs. Because the plaintiff is not qualified to sue, many cases cannot enter the litigation process, and effective protection will not occur in the environmental public interest. Therefore, it is necessary to make a breakthrough in the environmental public interest litigation for the main qualification of Village Committees.

4.4 The Practical Necessity

Use legislative reform to improve the environmental governance system, strengthen environmental judicial protection, and respond to environmental challenges with a revised public interest litigation system. Only the procuratorate

can have a foothold in environmental administrative public interest litigation, while as a civil litigation subject, environmental public interest organizations are marginalized in practice. On the other hand, in civil and administrative environmental public interest litigation cases, individuals have no place to stand. The procuratorial authorities have brought environmental public interest litigation against some major environmental violations that endanger public environmental interests. Procuratorates and environmental protection public interest organizations are mainly prosecuted, and the pre-litigation written notice procedure is set in the environmental civil public interest litigation. Related lawsuits are in the back of the line so that the existing competent subjects cannot reach the demand of relevant cases. In contrast, Village Committees are located in each village, more actively prosecute and provide a loophole for dealing with the failure to supply subjects in rural environmental tort litigation, so giving Village Committees competent subjects are important.

5. Suggestions for Improving China's Civil Environmental Public Interest Litigation System

5.1 Established a Special Fund for Environmental Public Interest Litigation

The fund has been piloted in Hainan Province, China, and has been widely praised by the public for its effectiveness in mobilizing the public to initiate environmental public interest litigation. This system should be expanded nationwide, with local governments taking the lead in setting up a special fund, and then encouraging large and medium-sized enterprises and individuals to make donations, with a third-party audit and monitoring to ensure that the fund is used openly and transparently. This special fund can, to a certain extent, solve the obstacle that many plaintiffs do not have the funds to initiate environmental public interest litigation, providing them with strong financial

protection and showing the government's moral comfort and encouragement to all plaintiffs.

5.2 Improve Problems in the Judicial Proceedings

5.2.1 Reduce the cost of environmental civil public interest litigation.

Reducing the costs of environmental civil public interest litigation can protect the endogenous motivation of environmental protection bodies to protect the environment. The high cost of litigation is undoubtedly a heavy burden for environmental protection organizations. Therefore, in order to encourage grassroots organizations such as village committees and the citizen to participate in environmental protection, the government should reform the method of payment of litigation costs in China. For example, if the plaintiff wins the case, the defendant will pay the litigation costs; if the plaintiff loses the case, the costs of the lawsuit will be compensated by the country, charged as a nominal fee, or deducted from the special fund for environmental public interest litigation, except for malicious litigation.

5.2.2 Clarifying the burden of proof for citizen participation in litigation

Citizens in China should have the burden of proof to initiate environmental lawsuits. This is for the purpose of environmental protection. It not only has a positive effect on protecting the environment and preventing environmental damage, but also is consistent with China's policy of building an ecological civilization and green and coordinated development. The burden of proof, for those who may cause environmental damage, it also has a certain role of warning and supervision. If the law clearly stipulates that the public authorities are responsible for the protection of the environment, and the mechanism of proof for public participation in environmental public interest litigation, which is conducive to the development of environmental public interest litigation.¹⁵⁾

15) 陆晨晨. 我国民事环境公益诉讼主体资格研究. 西部学刊, 2021(22): 62-64.

6. Conclusion

Environmental pollution in rural areas is becoming increasingly serious, not only infringing on the national ecological environment, but also infringing on the health rights of local villagers. In such a situation, the rural community needs a qualified plaintiff to file environmental public interest litigation on behalf of the rural community to protect the ecological environment and the rights and interests of the villagers. The village committee is a good organization that can balance the maintenance of the villagers' living environment and promote rural environmental protection and improvement. Expanding the eligibility of plaintiffs in environmental public interest litigation to include village committees will be a major breakthrough in environmental public interest litigation.

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