

Study on the Responsibility Distribution of Burden Proof in Public Litigation of Procuratorial Administration

Jihong Xue^{*}

Ningxia Police Vocational College, Yinchuan, Ningxia 750011, China

email: 1195164004@qq.com

^{*}corresponding author

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Abstract: Since the 18th National Congress was held, China's socio-economic development has developed rapidly, and the "public interest consciousness" of our people has also been increasing, with the relevant top-level system design, such as the public interest litigation system that was officially promulgated with the second revision of the Administrative Procedure Law, appropriately classifying the burden of proof, and has important reference value for the improvement of China's public interest litigation system and the role of supervision can also protect the public interests of the country and the people in all aspects.

1. Analysis of the Predicament of Administrative Public Interest Litigation at this Stage.

After the trial of public interest litigation trials, the "Administrative Procedural Law" clearly pointed out that the legal subject of administrative public interest litigation is the state organ exercising the procuratorial power. This "official complaint" litigation method broke the traditional litigation method. Compared with the traditional litigation method of "public prosecutors", the method of "public prosecutors" is more fair and just because the state organs exercising the procuratorial power are comparable to administrative organs in their ability to provide evidence and the burden of proof, while traditional litigation Compared with the defendant, the plaintiff is at a natural disadvantage in terms of the ability and burden of proof. therefore, The core issue now is whether to continue to use the traditional administrative litigation rules or to re-establish new rules. As the specific implementation method of the pilot test of public interest litigation and the new version of the administrative litigation law have not yet been clarified, the public interest litigation is still in dispute over the allocation of burden of proof. This article analyzes the problems and shortcomings in the experimental stage of administrative public interest litigation in order to find the methods and methods of the distribution of burden of proof in administrative public interest litigation.

1.1. Practical Research on Public Administrative and Litigation Interest

In the trial stage of public interest litigation, the Supreme People's Procuratorate promulgated the "Specific Implementation Measures for Pilot Public Interest Litigation Pilot Tests" which clearly stipulated the burden of proof assumed by the procuratorial organs during the public interest litigation process. In Article 45, it is clearly stated that during the process of prosecution by the people's procuratorate, prosecution recommendations should be given before the appeal for cases that meet the prosecution conditions. If the administrative organ still refuses to perform its duties, the procuratorate should bear the burden of proof to prove it. This measure is the direct basis in the legal sense during the trial of administrative public interest litigation, which can be directly applied by the procuratorial organs. For the cases where the burden of proof is required to be provided by the procuratorial organs, the first two provisions are relatively clear, because they meet the conditions for prosecution and procuratorial recommendations. Although the "provisional burden of proof provided by the procuratorial organs" can be understood as "the prosecution organs should bear the relevant burden of proof during the litigation stage when China's national interests and the

public's public interests are violated", the definition of the content law is still ambiguous of.

1.2. Deficiencies of the Administrative Procedure Law

China's second revision of the Administrative Procedure Law comes at the dawn of 2017. Article 25 of this law supplements the qualifications of becoming a plaintiff, the scope of cases accepted, and the procedures before filing an appeal. This means that China's public interest litigation system has been formally implemented through legislation, but the aspect of the burden of proof in the specific content of the Administrative Procedural Law has not been reflected. Then, the Supreme People's Court and the Supreme People's Procuratorate made further clarifications and refinements to the provisions of laws and regulations in the Administrative Procedure Law. In the actual litigation process, it has a certain guiding role for the public prosecutors to initiate public interest litigation, but the two high authorities are still not clear enough about the legal application issues and regulations related to the burden of proof. Some scholars have a major controversy on Article 22 of this interpretation, which is the content of the prosecutor's office explaining the prosecution conditions of public interest litigation. However, some other scholars believe that this section does not explicitly point out that it is the "burden of proof", but it is essentially an explanation of the burden of proof in the process of prosecuting public interest litigation by the procuratorate. Although these two views are different, they are logically reasonable. All in all, on the legislative level, administrative public interest litigation still has some deficiencies in the burden of proof, which will help arouse the enthusiasm of the academic community on the issue of the distribution of burden of proof in the litigation process.

2. Research on the Construction of Administrative Public Interest Litigation

How to solve the reasonable division of the burden of proof between the procuratorate and the administrative organ in the administrative public interest litigation procedure is not only conducive to protecting the public interest from being infringed, but also more effective in the implementation of administrative public interest. We should consider how to reasonably divide the burden of proof in the litigation process from multiple levels, and propose comprehensive coverage, accurate, clear, active and effective strategies and systems, which will greatly help resolve the practical difficulties and objections of the burden of proof in the current litigation process. This can effectively promote the achievement of the system goals of administrative public interest litigation.

2.1. Follow Objective Guidelines

The important part of the prosecution in the administrative litigation process is the rationality and legality of the actual administrative action, and it is also the core of the main dispute between the plaintiff and the defendant. This is because the evidence obtained by the defendant or the institution in the administrative litigation process is invalid of. Administrative agencies must adhere to the "file doctrine" principle, that is, the principle of "taking evidence first and adjudicating later" in the process of handling public interest litigation cases. The plaintiff in the traditional administrative litigation process is more disadvantaged than the defendant's administrative subject in the burden of proof. The administrative subject is more clear about the disputed public interest litigation cases and the burden of proof, and the evidence he holds is more convincing. The strength of the burden of proof has become the key to victory. If the plaintiff who is in a weak position is provided with the burden of proof, the balance of justice will move closer to the defendant's administrative agency. This is clearly inconsistent with the original will of the administrative litigation system. of. Compared with the traditional litigation model, administrative public interest litigation is a more scientific and reasonable litigation model. At the level of the burden of proof, comparing the two different litigation models, they have both common ground and unique features. . In the administrative public interest litigation procedure, although the procuratorial organs are the plaintiffs of public interest litigation cases, their ability to provide evidence is stronger, more comprehensive, and more persuasive, but the interests of the litigation cases have nothing to do with the procuratorial organs and cannot stand in the victim's perspective Thinking and giving evidence

can not fully grasp the relevant information of the case. The currently formulated administrative public interest litigation clauses should follow objective guidelines to maximize the reduction of the facts contained in the case, which is conducive to ascertaining whether the administrative organs have acted in a manner that violates national interests and social public interests. The possibility of proof should be given priority.

2.2. Give Appropriate Powers to the Procuratorate

In order to comprehensively consider issues such as the ability of procuratorates and administrative agencies to provide evidence in the burden of proof, the differences between the victims, the degree of harm to social and public interests, and the limits of "public good" regulations, so that the relationship between them is more balanced, so how to further It is imperative to optimize the power of the procuratorial organs in public interest litigation procedures. With the further reform of the national supervision system, procuratorial public interest litigation is an important work goal of various procuratorial organs. Through the amendment and improvement of the Administrative Procedure Law, combined with the two high courts to make judicial interpretations, it is clearly pointed out that if the procuratorate needs to perform its duties, it can go to the scene to conduct inspections and physical evidence inspections, and commission professional assessment agencies for identification. The insider can make detailed enquiries, and can also view, transfer, and copy materials and evidence related to the lawsuit to the administrative organ. In the case of more professional issues, professional institutions can be evaluated.

2.3. Establishing a Complete Normative System

In the "Tort Liability Law" and "Civil Procedure Law" promulgated in China at this stage, it is clearly stated that the plaintiff subject should bear the main burden of proof in cases of infringement of rights. At the same time, the procuratorate should also provide some important evidence in the public interest proceedings. For example, when proving the infringement, the plaintiff in the public interest litigation needs to provide proof of the infringement of the victim. As the subject in the lawsuit, the plaintiff does not have the investigative power in the legal sense, which leads to the existence of the infringement Greater difficulty. As the plaintiff in the public interest litigation process, although the prosecutors have some difficulties in proving such infringement, compared with civil subjects, the procuratorate has the power to investigate in the legal sense, and still has a certain upper hand when giving evidence and obtaining evidence. Therefore, it is practicable for the Procuratorate to provide evidence of actual actions that violate power.

3. Conclusion

Under the background of comprehensively administering the country according to law and advancing the reform of the judicial system, some local government agencies still violate public interests in the exercise of their powers, so it is difficult to avoid administrative public interest litigation cases. The "Procuratorial Public Interest Litigation System" was formally established and included in the scope of laws and regulations, highlighting that China's administrative public interest litigation system is one of the effective ways to protect the national and social public interests. There are still many obstacles in administrative public interest litigation. How to adjust and improve the distribution of burden of proof is the core of whether national interests and social public interests can be better protected. In short, we must unswervingly take the procuratorial organs as the main object of administrative public interest litigation, scientifically and reasonably allocate the burden of proof, and then build a more practical, comprehensive, scientific and reasonable administrative public interest litigation system.

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