

Judicial Protection of Environmental Litigation and Ecological Environment from the Perspective of Environmental Damage Relief

Ting Ruan

Shanghai Pudong New District People's Court, 110 Yongning Road, Pudong New District, Shanghai, China
785354609@qq.com

Keywords: Environmental Litigation; Compensation for Environmental Damage; Multiple Dispute Resolution Mechanisms

Abstract: The report of the Nineteenth National Congress of the Communist Party of China points out that “Man and Nature are the Community of Life”, we should abide by the harmonious coexistence of Man and Nature. With the enhancement of citizens’ awareness of environmental protection and the increasingly serious environmental infringement problem, it is particularly important to give full play to the function of environmental justice in the ecological environment protection of the Yangtze River Economic Zone. From the dimension of environmental damage relief, this paper further discusses the dilemma and breakthrough of environmental public interest litigation and environmental private interest litigation. In four aspects of environmental litigation system, ecological environment damage compensation system, environmental multiple dispute resolution mechanism, ecological restoration responsibility, this paper puts forward some ideas and suggestions on ecological security and ecological environment judicial protection.

Definition and Logical Structure of Environmental Damage Relief

Jurisprudence in Environmental Damage Relief. Legal interest is the life interest of a person who is protected by law and can be infringed or threatened objectively according to the basic principles of the Constitution.[2]Legal interest must be related to law, to people, to interests, and to be injurious. Environmental damage is a violation of environmental legal benefits, and the extension of environmental legal benefits is wider than rights. Infringement of environmental legal benefits includes both the damage or threat to the rights of an unspecified majority of people due to environmental pollution, the ecological damage or threat to unauthorised subjects, and the ecological damage or threat caused by administrative actions, as well as the cause of specific rights Situations where rights are damaged or threatened by environmental pollution.[3]The theory of legal interests and the relief of environmental rights and interests are logically consistent. Both are based on the overall ecological and environmental benefits of the human community. Among them, environmental rights and interests are the environmental benefits that human beings should enjoy, including personal environmental interests, national environmental interests, and the environment. At the three levels of public interest, the traditional paradigm of environmental relief logic at the center of rights has been unable to adapt to the scope of environmental rights relief. Environmental damage relief embodies the world view of "harmony between man and nature", sustainable development, and risk prevention and control. With the fusion of environmental legal benefits and the concept of pluralistic co-governance, China's environmental damage relief has basically formed. Integrated protection of personal environmental interests, national environmental interests, and

environmental public interests. From the logical structure of environmental damage legal benefit relief, first of all, the basis of the right to claim environmental damage relief must be clarified, then the content scope of environmental damage relief, and the protection system of environmental damage relief. From the perspective of judicial adjudication in environmental legal benefits, on the one hand, we must consider the implementation of general principles of civil law, environmental protection law, and related laws and regulations to strengthen the applicability of laws; on the other hand, we must consider how to use specialized trial mechanisms and law enforcement. Cooperate and interact with work to implement the spirit of protecting environmental rights and interests and strengthen judicial protection of environmental rights and interests.

Construction of a Diversified Resolution Mechanism for Environmental Disputes. The environmental dispute resolution mechanism can be divided into two types: private relief and public relief. Private relief mainly includes parties' self-negotiation, civil mediation and civil arbitration. Public relief mainly includes administrative mediation, administrative ruling, administrative arbitration, letters and visits, and Judicial proceedings. China's environmental dispute resolution mechanism has resolved environmental disputes to a certain extent, but there are some shortcomings and disadvantages of private and public relief, such as the low professionalism and efficiency of civil mediation, and the need to improve environmental judicial mechanisms. A complete environmental dispute resolution mechanism has not yet been formed, and the professionalism and complexity of environmental disputes are often ignored, and the connection between various dispute resolution mechanisms is ignored. The environmental dispute resolution mechanism in Germany is divided into a litigation resolution mechanism and an out-of-litigation resolution mechanism. In the litigation resolution mechanism, when private environmental interests are violated, individuals can initiate litigation in accordance with the civil law real rights relationship and tort law. When public environmental interests are violated In general, lawsuits are initiated by public interest environmental protection groups (environmental protection organizations); in the out-of-litigation settlement mechanism, environmental disputes are guided through informal administrative actions (ex-ante protection and post-hoc coordination agreements), reconciliation, mediation, and arbitration. Increase public acceptance. In developed countries including Germany, due to the early development of urbanization and industrialization, and the early emergence of pollution problems, they have basically formed a more mature and effective environmental plural dispute resolution mechanism, which can give China a certain reference in practice. Modern environmental disputes are showing a trend of diversification and sharp increase. With the development of China's economy, the contradiction between environmental people's livelihood and dispute resolution has become increasingly prominent. Although traditional dispute settlement methods also include settlement, mediation, litigation, and arbitration, etc. This method is not perfect, and the one-sided attention to the litigation explosion caused by the litigation method also limits the true resolution of environmental disputes. As soon as possible, the multi-environmental dispute resolution mechanism will be truly improved. While improving the judicial litigation resolution mechanism, it will also implement it with other dispute resolution mechanisms. Cooperation and convergence.

The Dilemma and Breakthroughs of Environmental Public and Private Litigation under the Current Law

Analysis on the Mode of Environmental Public-Private Litigation Separation. There are differences between the environmental public interest litigation and environmental private interest litigation in terms of the plaintiff's subject qualification, litigation purpose, and litigation function.

The plaintiff of the environmental public interest litigation does not require a direct interest relationship with the infringed environmental interests. The plaintiff of the environmental private benefit litigation requires Interests in which personal and property interests are directly damaged; the purpose of litigation in environmental public interest litigation is to achieve environmental protection and prevent environmental pollution or damage, and the litigation function is more focused on prevention; the purpose of litigation in environmental private interest litigation is to remedy the injured individual Interests, filling losses, pay more attention to relief in litigation functions. "Interpretation of the Supreme People's Court on Several Issues in the Application of Environmental Civil Public Interest Litigation Cases" Article 10, paragraph 3 stipulates that after a people's court accepts an environmental civil public interest lawsuit, a subject who has suffered damage from private interests due to the same environmental tort cannot apply to participate in public interest lawsuits Can only be prosecuted separately. From this we can see that the current environmental civil litigation in China is based on the principle of infringement of the object, the difference between the object of the infringement and the principle of discrimination. The public interest and private interest are protected separately, and environmental public interest litigation and environmental private interest litigation are separated. Although the environmental public-private benefit separate litigation model takes into account the heterogeneity of environmental public-private litigation proceedings and has certain rationality and legitimacy, relevant laws and judicial interpretations have also coordinated and coordinated the two to a certain extent. However, the separate litigation model may be caused by the coincidence of the plaintiffs' claims in environmental public interest litigation and the plaintiffs in environmental private interest litigation, the order of prosecution of environmental public interest litigation and environmental private interest litigation, the jurisdiction of environmental public interest litigation, and environmental private interest litigation Conflicts and contradictions in judicial trials.

Theory and Practice of Environmental Public and Private Interest Litigation. The separate litigation model of environmental public interest litigation and environmental private benefit litigation is contrary to the penetration of the concept of overall ecological protection in environmental civil litigation. The reason for the separation of environmental public and private benefit protection is mainly due to the epistemological logic of "the subject and the guest bisected" Following the separation logic between the subject and the object of man and the natural environment, the interests of man and the interests of non-human natural objects are diametrically opposed and separated[4]. From the perspective of ecological holism, man and nature are an inseparable organic whole. In the environmental civil litigation, the subject and the guest should be divided into two parts, and the relationship between man and nature should be unified and protected. In this way, the symbiosis of environmental public and private interests can be resolved. Advance the difficulty and realize the holistic expression of environmental civil litigation. Taking the United States as an example, the United States' suit for damages caused by the same environmental tort is to combine the relevant parties and the litigation request into the same case for trial in accordance with the provisions of the Federal Civil Procedure Rules merger, rather than separate public and private interests. The lawsuit has greatly improved the efficiency of litigation and effectively resolved the issue of differences in adjudication. Taking Japan as an example, the Environmental Protection Basic Law formulated by Japan in 1993 combines the contents of the Basic Law on Pollution Countermeasures and Natural Environmental Protection Law. The public hazard lawsuits that damage the personal health and environmental protection lawsuits that damage the elements of the environment were changed from separate relief states to combined trials, and the protection of environmental public and private benefits was achieved together. The public-private intertwined

damage caused by the same environmental infringement, which is resolved by the court through a combined trial, has become a general trend in law and policy.[5]

Development of Environmental Public Welfare and Private Benefit Integration Relief. The environmental public interest litigation and environmental private interest litigation caused by the same environmental tort are based on the common basic fact that the environmental medium is damaged. Therefore, the environmental public interest litigation and the environmental private benefit litigation are merged into the same litigation procedure through the merger system of civil litigation. It has legitimacy with the referee, but to achieve the integration and relief of environmental public welfare and private benefits in the true sense, it is necessary to establish and improve the compulsory merger system and the transfer of implementation right system. Under the compulsory merger mode of two lawsuits, because the two lawsuits of environmental public interest lawsuits and environmental private lawsuits are forcibly merged according to legal regulations, they must be carried out with caution, and realistic operability must be considered, and the judge must be given certain merger discretion. It can be considered to be limited to environmental public and private lawsuits filed by the same court for the same environmental tort, and it is more appropriate to have exclusive jurisdiction; the mode of transfer of enforcement power mainly includes litigation trusts and litigation directors, where the plaintiff of one lawsuit obtains another lawsuit. The right of law enforcement is applied after the two lawsuits are merged. The party that has obtained the right to proceed with the lawsuit continues the case lawsuit. Under the mode of transfer of the right of enforcement, it is more appropriate to grant the right to enforce the right from the environmental private interest litigation subject to the public interest litigation subject. In terms of jurisdiction, in principle, jurisdiction should be exercised by the court of the party that has obtained the right to implement the lawsuit. If there is a conflict of levels, it should be administered by a higher court in the two suits. After the merger of environmental public interest litigation and environmental private interest litigation, intermediate judgments can be introduced to carry out the litigation process. The interim judgment is a judgment that is made before the final judgment and resolves the disputes between the two parties that have become problems during the trial. The interim judgment is intended to try the trial and is not ready for the final judgment.[6]The court first made an intermediate judgment on whether the environmental medium was damaged, settled specific disputes, and then decided on the plaintiff's claim for damages.

Conception and Reconstruction of Ecological Security and Ecological Environmental Protection System

Construction and Improvement of China's Environmental Litigation System. From the operating status of environmental courts, specialized environmental courts, and environmental trial collegiate chambers set up in China in recent years, in order to further build and improve our environmental litigation system and achieve the expectation of environmental justice specialization, we can proceed from the following aspects : First, set up a specialized environmental court, explore the centralized management model for environmental criminal, civil, and administrative cases, integrate environmental litigation jurisdiction issues, promote centralized trials of environmental cases across regions, and expand the scope of environmental litigation. The scope of acceptance of cases should include at least environmental criminal litigation, environmental tort litigation, applications for judicial review of specific administrative actions related to environmental planning protection, applications for enforcement, etc ; The special law on environmental lawsuits systematically regulates environmental lawsuits, systematically confirms environmental special trial activities, coordinates different types of lawsuits, and resolves the problem of confusion between

them. In addition, the trial of environmental cases must have clear and uniform certification rules and standards. ,avoid Litigation between confused with the obligation to prove or demonstrate misallocation of burden[7];Thirdly, due to the professional nature of environmental dispute cases, it is necessary to select and train a highly professional team of judges, give play to the subjective initiative of judges, and ensure the normal conduct of environmental lawsuits. In addition, in the trial of environmental cases, an expert jury system or reference expert is introduced. A supporter mechanism, in which judges and environmental technicians jointly participate in the protection of environmental legal benefits, and improve the level of environmental case trials. Finally, the process link between environmental justice and environmental administration is strengthened, and administrative agencies and judicial agencies each adhere to their own boundaries of responsibility. Judicial independence gives the environmental court a higher level of judicial review of specific administrative actions related to the environment. It is also necessary to clarify the scope of the benefits of environmental lawsuits, safeguard the protection of the interests of lawsuits, and actively accept supervision from all sides.

Reform and Development of the Compensation System for Ecological Environment

Damage. In order to further reform and develop the compensation system for ecological environmental damage, we must not only establish the basic rules for compensation for ecological environmental damage, clearly define the liability for compensation for ecological environmental damage, but also work from the following aspects: First, we must truly implement preventive liability and explore potential The method of accountability for ecological and environmental pollution and environmental damage acts to achieve the effect of ex-ante prevention; secondly, a sound ecological environment damage assessment and evaluation system shall be improved, the subjects, institutions, scopes, and fields of assessment and assessment shall be refined to strengthen the assessment and assessment institutions Professional qualifications and practice qualification requirements, to resolve the chaotic phenomenon of forensic appraisal and judicial evaluation agencies with uneven quality and repeated appraisal and evaluation, while establishing a unified technical standard system and appraisal and evaluation process management norms, and clarifying strict laws for appraisal and evaluation agencies Responsibilities and management mechanisms, as well as ensuring the participation of both parties in the appraisal and evaluation process, and ensuring that the appraisal and evaluation work is carried out legally and in an orderly manner; again, we must improve the consultation system for compensation for damage to the ecological environment, and give administrative agencies a certain degree of ruling on whether to initiate the consultation process Rights, grant administrative agencies certain privileges in the implementation of negotiation agreements, give play to the superiority of administrative agencies in the measurement of benefits, and limit the exercise of private rights during the negotiation process to maintain the stability of the formed negotiation agreements. Improve the external supervision of the ecological environment damage compensation consultation system and improve the public participation mechanism. Finally, improve the ecological environment damage compensation enforcement system, regulate the management and use of environmental damage compensation, including establishing and improving relevant laws and regulations, and clarifying environmental damage compensation. The scope of application is to establish a special fund management organization, and at the same time, set up a new type of fund payment system, implement instalment payments, and implement a combination of monetary payments and non-monetary payments to comply with the long-term rule of ecological environment repair.

Practice and Extension of Multi-environmental Dispute Resolution Mechanism. In order to build a diversified resolution mechanism that can meet the needs of society and resolve growing

environmental disputes, first, consider enacting the Environmental Dispute Handling Law, which specifies the scope, basic principles, procedures, methods and methods of environmental dispute cases accepted in detail. Etc., to achieve the connection between public and private relief methods for environmental disputes, implement effective docking of environmental litigation settlement mechanisms and administrative settlement mechanisms, properly resolve conflicts between environmental disputes, and set up independent environmental dispute settlement agencies. The environmental dispute handling agency is composed of a diverse group of professionals. It handles environmental disputes within its jurisdiction based on the principle of territorial jurisdiction. Second, it improves the parties' self-negotiation mechanism and civil mediation mechanism in environmental disputes, establishes an environmental agreement system, and appropriately expands the civil society. The scope of the main body of mediation will give the parties a certain degree of enforcement of the settlement agreement and the mediation agreement after the negotiation. At the same time, further improve the arbitration mechanism, rationally allocate arbitration institutions and arbitration personnel, and standardize and improve the arbitration procedures; The construction of an administrative resolution mechanism for disputes, the establishment of an efficient administrative resolution mechanism, the establishment of the legal effect of administrative mediation, and its primary principle, cooperating with administrative arbitration, administrative rulings and environmental petitions, and giving full play to the administrative resolution mechanism in environmental disputes At the same time, it is necessary to improve the environmental dispute litigation resolution mechanism by relaxing the prosecution qualifications of environmental dispute subjects, improving environmental public interest litigation, and establishing a special environmental litigation mechanism to effectively protect citizens' environmental rights[8];Finally, a multi-disciplinary solution for cross-regional eco-environment disputes is type-designed, the specific application and normative application of the dispute resolution clauses are clarified, and the overall governance and protection of the cross-regional ecological environment is realized. Destroy the joint prevention and control coordination mechanism, strengthen the integration of subjects, coordinate behaviors, etc., so that the interests of members of the community and conflicts can be resolved through compliance channels.

References

- [1] M.K.Zhang:On legal interest(China University of political science and Law Press,China 2003).
- [2] T.Tang:The Logic Reconstruction of Environmental Damage Relief-The Evolution from "Right Relief" to "Legal Interest Relief".Legal review,5(2018).
- [3] X.D.Zhang:The Dilemma and Way out of the Concurrent Trial of Environmental Civil Public and Private Interest Litigation.Chinese Jurisprudence,5(2018).
- [4] G.Wagner:The Future of Damages Law,C.F.Wang.(China Legal Publishing House,China 2012).
- [5] S.Koji:New civil procedure law,J.F.Lin(Law Press,China 2018).
- [6] M.G.Zhan and Y.Wang:On the Establishment of Special Procedures of Environmental Litigation in the Perspective of Environmental Justice Specialization.Journal of Nanjing University of Technology (Social Sciences),2(2019).
- [7] X.F.Zhou:Environmental right theory(Law Press,China 2003).