

A Comparative Study on the Domestic and Overseas Public Interest Litigation System

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Abstract

The rapid economic development of our country is accompanied with a series of problems that should not be ignored, including environmental pollution, erosion of state assets, infringement on public interest and so on, but it is difficult to properly solve these problems in short term as a result of imperfection of the existing legal system and inadequate supervision. Through the comparative study on the public interest litigation (PIL) system of major countries at overseas and combined with China's national condition, the existing legal system should be improved specifically in the respect of expanding plaintiff's qualification and extending the statute of limitations.

Keywords

Public Interest Litigation, Comparative Study, Statute of Limitations, Civil Procedure Act

1. Introduction

With the further deepening of reform and opening up, China's economy has made great development, people's living standard has been greatly improved, but in our country's rapid economic development and at the same time, we also face a series of major problems, such as environmental pollution, soil erosion, loss of state-owned assets, the group of consumer rights and interests damage events such as, for and so on the public interests or the interests of the state of damaged cases, although our country August 31, 2012 amended the "PRC Civil Procedure Law" fifty-fifth stipulates: "the pollution of the environment infringement, many of the legitimate interests of consumers and other damage to the social public interest behavior, the provisions of the law of the relevant organs and organizations may bring a lawsuit to the people's court." But because the regulations are too general, fuzzy, and the lack of relevant supporting program implementation of security, bring a large extent hindered the public interest litigation. It is necessary to make a contrastive study of other countries, the system of public interest litigation, and then to China's public interest litigation system put forward a sound proposal, further improve China's public interest litigation system, to provide better service for the harmonious society.

2. Overview of PIL

PIL is an age-old system with a history dating back to Roman times and was confirmed for the first time in the legislation of the United States. It is generally said that PIL is a new means for rights relief and a system whereby national, social organizations and citizens file lawsuits in court to safeguard public interest in accordance with laws when illegal activities companies, enterprises and other organizations or individual citizen have conducted infringed or will infringe the public interest. Compared to the conventional litigation against breach of contract or violation of rights, PIL has the following characteristics.

2.1. The Purpose of PIL Has Publicity and Preventability

The PIL is established, on the one hand, to safeguard the national interest and social public interest, on the other hand, to prevent the occurrence of events violating the national interest or public interest.

2.2. The Plaintiff in a Case of PIL Is Diverse

The plaintiff in a case of PIL can be either social organizations and individuals whose personal rights or property rights suffer direct losses due to direct violation, or social organizations and individuals whose personal rights or property rights are not damaged at all or suffer no direct or indirect losses, or even state agencies as long as the illegal activities of the parties offense against the national interest or public interest and legitimate rights of an unspecified majority of people. Only relevant state authorities are allowed to file lawsuits on behalf of the state, while any other organizations and individuals can file a lawsuit on its own behalf.

2.3. PIL Is Subject to the National Intervention

In PIL, the State confers upon all organizations and individuals the right to file a lawsuit against any law violator who infringes the national interest or public interest, in particular, confers upon national prosecuting authority the right to file PIL, which enhance the national intervention with the support of public power intervention right.

3. Legislation Practices Related to PIL in Other Countries or Regions

Public interest litigation has been developed in abroad for many years, has a relatively mature system, has very important significance to china. American lawsuit is the founding members, but also the development of environmental public interest litigation is the most mature countries, it establishes the citizen suit system is a model for countries to learn from; the most high level and group litigation system in Germany on behalf of the countries of continental law system in the field of public interest litigation; British prosecutor action and collective action system the maximum protection of the interests of vulnerable groups; and as the level of economy, population, environmental quality and Chinese similar developing countries—India is the first Asian country to establish the environment public welfare lawsuit, attracted the eyes of the world, is many Southeast Asian countries emulate.

3.1. The Practices on PIL in the United States

The United States is the founder of the modern PIL, and has passed “Sherman Antitrust Act” as early as 1890, which is the first statute to rule the PIL system (Cheng, 2014).

There are two means to file an environmental PIL, one is a lawsuit filed by the Attorney General, and the other is a lawsuit filed by a citizen. The lawsuit filed by the Attorney General refers to PIL for environmental protection filed by the Attorney General on behalf of the US federal government or state governments against any citizen, legal person or other organizations that cause environmental pollution and damage. Under the US Statutory Law, the lawsuit filed by a citizen refers to PIL filed by a citizen against other citizens, legal persons, organizations or state authorities whose illegal activities have caused environmental pollution and damage. The permissible civil PIL in the United States mainly includes “qui tam action”, antitrust litigation and citizen suit in the field of environment law. The “qui tam” provisions initially specified in “False Claims Act” of 1863 in the United States allow a US citizen to file a civil action against any illegal activity defrauding the government in order to recover the losses the government has suffered, and the person filing an action can receive a portion of any penalty imposed under the relevant law if the suit was successful. Since the federal government, rather than the citizen fil-

ing a suit, is the main beneficiary from such suit, the suit has the nature of PIL. The provisions of citizen PIL system in the field of Antitrust Law are mainly included in the “Clayton Antitrust Act” of 1914 in the United States, and the Article 15 of the law empowers any citizen, firm, corporation and union to bring a lawsuit for injunctive relief in a court which has jurisdiction over the parties. Since the field has influenced the PIL in the United States most, the citizen suit in the field of environment is prescribed in the Clean Air Act 1970 at the earliest, and this law begins to include the provisions for citizen suit, empowers any citizen to receive assistance from the federal government and supervise the law enforcement, and improves the relevant proceedings on citizen suit.

3.2. The Practices on PIL in the United Kingdom

The legislation and provisions related to PIL are mainly included in “Crown Procedure Act”, “British Civil Law” and “Rules of Civil Procedure”, and there are two forms of action: the procurator action and representative action, class action.

1) The PIL filed by a British prosecutor. As per the provisions of “Crown Procedure Act” and the third edition of “Code for Crown Prosecutors” revised in 1994, the prosecutor is entitled to bring suits on behalf of the royal family when the interest of British royal family has been violated. In the United Kingdom, the civil procedures allowing prosecutor to be involved in are as follows: (a) The civil lawsuits concerning the interest of royal family. The Attorney General, acting as the representative of the royal family, is empowered to bring a suit against the tort-feasor in the name of the king or the royal family when the interest of the royal family has been violated. (b) Lawsuits denounced by citizens. The Attorney General is allowed to participate into a lawsuit upon application by the citizen and on behalf of the citizen who revealed the lawsuit concerning the violation of public interest in order to stop the activities disturbing public order and causing harm on public property or to enforce the public duty. The Attorney General can file a lawsuit independently if the activities above were found to be harmful to the public interest. (c) Lawsuits to confirm illegitimate and legitimate children. As per the provisions of “Civil Procedure Act”, when the party applies to the court for confirming illegitimate and legitimate children, the application form must be submitted to the Attorney General who has jurisdiction over it, and the Attorney General will be involved in the hearing and trial as the defendant.

2) The representative action, class action of British action. The British mass claim includes representative action and class action. The representative action is where a group has a common claim in the case of mass claim, and therefore, one or more than one of them are allowed to participate into the lawsuit as representative (s) of the group. The decision of the court has binding effect on other persons in the class. The class action is a suit involving a large number of people in the case of mass claim, and these persons form a group to bring a suit on behalf of the group or members in absence due to their common claim. The “Rules of Civil Procedure” of the United Kingdom allows the parties or the court itself to bring a class action. The decision and verdict the court made have a binding effect on all members involved. Any member refusing to accept the ruling can appeal against the decision and verdict after approval by the court which made the decision and verdict.

3.3. The Practices on PIL in Germany

Germany has a more comprehensive legislation in PIL system and the relevant provisions of PIL are included in Constitution of Germany, Administrative Procedure Law, Civil Procedure Act and the Anti-Unfair Competition Law. The following focuses on an analysis on the PIL system of Germany from the view of the subject filing PIL (Liu, 2014).

1) PIL filed by citizens. The provisions of PIL filed by a citizen are mainly included in Constitution of Germany where it is also defined as the “public action”. The Constitution empowers all citizen of Germany to sue the German Constitutional Court in the request that the unconstitutional law shall be judged to be invalid by the German Constitutional Court as it deems certain provisions in the existing Germany law violate the constitutional rights and other rights regardless of whether infringement occurs or whether the infringement case concerns the direct or indirect interest of the citizens themselves (Qi, 2013).

2) PIL filed by a group. The group PIL refers to a lawsuit brought by qualified corporate body or agency under the law in order to protect the interest of an unspecified majority of people when they have no intention or ability to bring a suit since each of them suffers small losses from the case from which the majority suffer losses.

3) PIL filed by a prosecutor. Germany allows a prosecutor to bring PIL or participate into PIL as the representative of public interest. As per the provisions of German Civil Procedure Act of 1877, the prosecutor can bring lawsuits for confirming the nullity of marriage, application of interdicted person and declaration of death

of missing person and so on, or participate into lawsuits in trial.

3.4. Legislation Practices on PIL in India

The United States is the founder of the modern PIL system, while India is the first country to introduce PIL system and has established a more perfect PIL system than that of the United States.

PIL in India has a history dating back to the late 1970s and early 1980s with a reference to the related legislation of environmental PIL in the United States, and India has developed “Water (Prevention and Control of Pollution) Act” in 1974, promulgated “Forest Conservation Act” in 1980, passed “Air (Prevention and Control of Pollution) Act” in 1981 and enacted “Environment Protection Act” in 1986. PIL in India has its distinct characteristics. It has less limitation on the plaintiff standing to use and empowers its all citizens and all eligible social organizations to bring an action. Its relief measures mainly depend on interim order which is an interim measure enforced by the court in order to timely stop the illegal activities endangering public safety regardless of whether the party made an application or whether the defendant is at fault. In respect of the jurisdiction over litigation, the courts at all level have jurisdiction over PIL under Indian law, and in general, the Supreme Court has jurisdiction over mass-related cases concerning a large number of people and influential cases. India has established the relevant supporting measures to simplify the procedures of PIL, reduce expenses on PIL and encourage citizens to bring PIL.

4. The Current Situation of PIL System in China and Suggestions for Improvement

The “Civil Procedure Act” newly revised on August 31, 2012 introduced the PIL system within the scope of civil procedure for the first time, which is a major breakthrough of PIL in China. The Article 55 stipulates that the eligible institutions and related organizations under the law can bring an action against the activities in violation of the social public benefit including the pollution of environment, the infringement on legitimate rights and interests of a majority of consumers. But the provisions are too simple, and the lack of relevant supporting measures, in practice it is difficult to implement.

At present, in China’s current legislative system concerning the public interest litigation, although the direct provisions of the public interest litigation system, but these provisions are too scattered and simple, no relevant judicial interpretations complement, also no real sense of the public interest litigation procedures, and has not formed the unified public interest litigation system, it is difficult to operate in the judicial practice, also it is difficult to reflect its value. Compared with the USA, Britain, Germany, India and other countries are relatively perfect and mature system of public interest litigation, a considerable gap. Therefore, to put forward the following suggestions for China’s public interest litigation system to improve.

4.1. Strengthen the PIL System

Strengthening the relevant legislation is the key to establish a sound PIL system, especially in the fields of environmental protection, water resource conservation and consumer protection. For a long time, there is no accountability or law to go by after the activities endangering the public safety and violating the public interest occur due to the inadequate legislation of PIL in such fields in China.

4.2. Define the Scope of Plaintiff and Increase the Type of Plaintiff

In accordance with the Article 55 in the “Civil Procedure Act” of China newly revised on August 31, 2012, the plaintiff in PIL shall be legal institutions and organizations. It is widely believed that this provision is ambiguous and oversimplified. Firstly, neither the law nor other laws further defines what is legal institution and organizations. In order to successfully start procedures of PIL, it is necessary to specify the “legal institutions and organizations” further. Secondly, a citizen is not recognized legally as a plaintiff standing to sue in PIL in our legislation of PIL system, since such provision is objectively imperfect, the author suggests that it is necessary to allow a citizen to be the plaintiff in PIL (Qi, 2014).

4.3. Provide the Statute of Limitations of PIL Separately

The special provisions of the statute of limitations of PIL are not included in the existing legal system in our country. In accordance with the regulations on the statute of limitations in the existing legal system in our country, the special statute of limitations shall be one year as specified in Article 136 in “General Rules for Civil Law”

in China states “The statute of limitations shall be one year in the following situations: 1) Claims for compensation for bodily injuries; 2) sales of substandard goods without proper notice; 3) deferred or non-payment of rent; 4) storage property was lost or damaged.” The ordinary statute of limitations shall be two years under Article 135 in “General Rules for Civil Law” in China that the statute of limitation on the application to the People’s Court for the protection of civil rights shall be two years, except otherwise provided by law. It is obvious that both the special and ordinary statute of limitations are too short, which is adverse to the case of PIL and the protection of the public interest, so the author believes that special provisions shall be made for the statute of limitations in the case of PIL. Different scholars may have different views on how long the limitation period shall be, still, the author holds that a period of 10 years may be applicable considering that 10 years is long enough for the relevant institutions and groups to bring an action and collect evidence (Wang, 2010).

In the process of learning the advanced PIL system from other countries, we should take our local culture into consideration in order to improve the relevant laws and regulations of our country, establish an integrated PIL system and perfect PIL system of our country.

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