Conference Paper

Research on the Status and Development in Asian Environmental Administrative Public Interest Litigation

2018

Thirteenth International Conference on Interdisciplinary Social Sciences

Granada, 25th – 27th July 2018

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July 2018

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Abstract: Aimed at environmental protection, environmental administrative public interest litigation safeguards the environmental rights of citizens by means of administrative litigation. If the government power is not subject to proper supervision and control, abuse of power may ensue, resulting in greater damage to the public interest in the environment. To gain an insight into problems and find effective solutions to such problems, it is necessary to study cases in recent years in Asian countries and probe into the strength and weakness of the similar systems in each country.

Key words: **Environmental Administration; Public Interest Litigation; Environmental Right; Environmental Justice**

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Introduction

1. Objectives

In recent years, environmental problems keep coming to the fore, but many citizens are helpless in the face of environmental pollution accidents. It is especially common that governmental institutions conduct illegal examination and approval, are lenient towards companies responsible for environmental accidents or just turn a blind eye to them, thus causing greater pollutions to the ecological environment. However, due to the wide power gap between the two sides, the limitations of the prosecutor, etc., even if with their cases accepted and heard, many prosecutors are still struggling to win, thus failing to play a deterrent effect on pollution enterprises. The further improvement of environmental administrative public interest litigation system can guide the eligible subject to seek judicial relief, and, most importantly, can protect the original environmental right of citizens.

2. Significance

Environmental rights are basic human rights enjoyed by citizens and are the basis for relief when citizens' environmental rights are infringed. The theory of environmental rights is the cornerstone of the establishment of environmental administrative public interest litigation; the improvement of environmental administrative public interest litigation system can enrich the existing environmental right theory in the Asian Region. The two complement each other and cooperate with each other. The improvement of the environmental administrative public interest litigation system will further regulate the illegal acts or omissions of the relevant administrative organs, which will have a deterrent effect on them and urge them to exercise their power properly, increase the punishment of pollution enterprises and thereby reduce environmental pollution accidents.

3.Methods

Literature analysis: Based on the basic theory of environmental public interest litigation, this paper proceeds from a strong body of literature and data, reveals the concept, characteristics, theoretical basis, etc. of environmental administrative public interest litigation, and, based on that, analyzes the problems encountered on the road to further improvement of environmental administrative public interest litigation system in the Asian Region.

Comparative analysis: The comparative analysis is used twice herein. Firstly, the paper compares the environmental administrative public interest litigation systems in civil law countries (illustrated by the cases of Japan and China) and Anglo-American law countries (illustrated by the cases of India and South Korea), thereby analyzing the shortcomings of the environmental administrative public interest litigation in the Asian Region. Secondly, it compares the environmental civil public interest litigation with the environmental administrative public interest litigation, and put forward the opportunity of further improvement of the environmental administrative public interest litigation system in the Asian Region.

I. The Basic Concept and Theoretical Basis of Environmental Administrative Public Interest Litigation

I.1. The Basic Concept of Environmental Public Interest Litigation and Its Development

Public interest litigation gained its roots from the Roman law, and as indicated in Zhou Nan's *The Original Theory of Roman Law*, the concept is relative to that of private interest litigation. Private interest litigation is a lawsuit that aims at safeguarding the rights of any individuals, and can only be filed by individual of concern, while the goal of public interest litigation is none other than to protect social justice and public interest; in exception to the those restricted by the law, any civilians are allowed to file the lawsuit. As the term suggests, private interest litigations are normally instigated by the infringement of personal interest, such as those of natural and legal persons, as well as organizations. On the other hand, public interest litigations are instigated in case of any violation against national, social and/or public interests, and any civilians or organizations, other than the parties with direct interest, may bring the lawsuit to the court, all under the law's authorization. Also, the lawsuit will be handled by the court, who will evaluate the offender's liabilities, and pursue the charge against it. Relative to its counterpart, public interest litigation is observed to have two main characteristics, one of which is to uphold social justice and look to achieve social equity as the direct purpose, so as to safeguard not only national interest, but also that pertaining to the society and the public. The second characteristic is that the plaintiff can also be a party who owns no direct interest to the case.

The advent of industrial age and development of global trade has brought about economic

advancement, which in turn enhances people's living standards, but not without the dire cost of continuous destruction ecological environment, dense smog shrouding the cities, water pollution issues, global warming, and many other direct threats to the survival and development of humanity. In the light of these threats, public interest litigation has also "evolved with time", extending its scope to the environmental pollution; and with that, the environmental public interest litigation was established. As a definition, environmental public interest litigation can be referred to as a court-protected, environment-related, public interest litigation system that deals with the abuse and infringement of environmental public interest due to illegal acts or inaction by administrative institutions, companies, enterprises, or other organizations and individuals. Based on the classification system of the current procedural law, environmental public interest litigation can be divided into environmental civil and administrative public interest litigation. For instance, in South Korea, most public interest litigations belong to civil litigation, and among them, the "Mangwon-dong flood" is the most representative case. In 1984, flooding occurred in the Mangwon-dong neighborhood in Seoul; local residents had accused the government for their poor water-gate control as the cause of flooding, and the corresponding claim was brought up to the court soon after. Following the successful claim assertion, approximately twenty thousand flood victims filed for their lawsuit. After seven years of such legal activities, the civilians' attitude towards legal proceedings has changed drastically, particularly with respect to political and economic oppression —— an issue that troubled a lot people. This civil litigation has greatly improved the confidence of these group of people to take actions against the government through legal means, and the political influence resulting from this phenomenon has gone far beyond the economic compensation paid out for the case itself.

I.2. The Establishment of Environmental Administrative Public Interest Litigation and Its Development

Environmental administrative public interest litigation is a form of public interest litigation when seen from the public environmental rights perspective. It can be traced back to the ancient Roman times, and public interest litigation was then a concept relative to private interest litigation. Private interest litigation dealt with individuals' interests, therefore it can only be brought up to the court by a specific individual. Public interest litigation, on the contrary, was concerned with actions that lead to the breach of social and public interests, which instigation was open to the

civilians in general, unless specified by the law. With the modernization of society and the expansion of control by state administration, the demand for protection over public interest is also increasing, and so the need for states to accordingly exercise their power arises. Under the influence of early liberal capitalist economy, and also due to the limitations of social development, adopting private interest litigation would both fulfill the purpose of safeguarding public interest, as well as meeting the needs of public and social development. However, as we enter into the modern society, and also due to its increasing complexity, an act too unitary in its structure often leads to frequent violations of personal interest, consequently drastically reducing the capacity of traditional litigation to solve the complex social issues in the modern era, and revealing more and more unsolved problems as time passes. This phenomenon highlights the distinctive feature of the modern times: the high possibility of getting one's interest breached. Environmental administrative public interest litigation can be commonly referred to as a form of legal proceedings that could be lawfully filed by any procuratorial organs, civilians, legal person, and organizations, for infringements of ecological resources and environmental public interests by administrative acts. This litigation is carried out by the court, based on a set of legal procedures, and includes the review of administrative acts by the relevant institutions, covering its legitimacy and rationality. The litigation will also ensure the maintenance of environmental justice by the filing judicial lawsuits. There are four significance to the implementation of environmental administrative public interest litigation:

1. The object of protection for the litigation is environmental public interest.

2. The litigation aims at safeguarding the environmental rights of every civilians by judicial means, through monitoring and standardization of environmental administrative acts, while eliminating those that are illegal.

3. The implementation of the litigation is itself a form of practice concerning the process of people's democratic supervision.

4. The litigation protects the environmental rights of every civilians, and simultaneously looking to achieve environmental justice.

In many of today's welfare states, it is generally accepted that both personal and collective interests should be protected. Hence, the number of civilians filing for lawsuits increases, and as social organizations and groups yearn for profits, public interest litigation has become a major

trend in the current society. This allows environmental administrative public interest litigation to gradually strengthen its importance in the society, and at the same time, further sets the tone for its advancement to be the main mode of litigation.

I.3. The Most Fundamental Theoretical Basis of Environmental Administrative Public Interest Litigation: "Environmental Rights"

Environment is a foundation towards life of humankind, and the resources it grants us are irreplaceable elements for survival. Therefore, environmental pollution and destruction are absolute threats to our health and lives. This makes the right to protect the environment， including sharing the enjoyment of living in safe and comfortable surroundings, a privilege to anyone. These are referred to as the environmental rights. The manifestation of features of human rights in environmental rights can be observed from the following characteristics. Firstly, the concept of environmental rights was proposed under the basis of "human rights". Not only so, the concept has also been popular among the academicians, and has gathered supports internationally from various scholars of the field. Taking as an example the "Declaration of the United Nations Conference on the Human Environment", or more commonly known as the "Stockholm Declaration", had environmental rights set as one of the many human rights. It is a new kind of human rights, meant to continue the legacies of France's "Déclaration des Droits de l'Homme et du Citoyen", Constitution of the Soviet Union, and Universal Declaration of Human Rights (UDHR), as the forth milestone in the history of human rights development. Doctrines of environmental rights with respect to the human rights has so far promoted the development of environmental rights theories, so has the theories of environmental rights enrich the contents of the human rights. Secondly, is the generality of environmental rights. It is new form of legal rights, similar to that of other basic human rights as to citizens, economic rights as to corporate entities, or related rights of sovereignty as to the states. The most significant representation of its characteristic nature is interest, or in other words, it is a method of promoting interest, and is regarded as the most reliable and effective methods of all. Thirdly, the demand for interest attached to the environmental rights corresponds to common ethical standards for ethics, such as for relevant evaluations of public rights as well as human behaviors and nature. Fourthly, environmental law is recognized as the set of limiting standards for harmonious and peaceful interactions between not only individuals and their societies, but also individuals and nature. Hence,

the goal of environmental rights is to actually construct a harmonious society.

Every form of rights consists of four parts: one, the subject of rights; two, the object of rights; three, the content of rights; and four, the obligatory party. Environmental rights can be considered as the basic rights in which civilians are entitled to, as to the rights for good environment. The main subjects for environmental rights are natural persons, therefore should the government be found to have exercised any behaviors that cause destruction to the environment, a lawsuit can be filed, with the subjects being civilians, and basic principles adopted being that of administrative law. The objects of environmental rights are the environmental condition and its constituent elements that may bring impact to human life or productivity. These are the public environmental interest under protection in an environmental administrative public interest litigation. The third part, content of environmental rights, are diverse, covering aspects of ecology, aesthetics, mental, cultural property, etc. Though it may seem to be boundless, but in fact, the limits can be specified and quantified by means of standards of environmental quality, etc. Lastly, places granted with rights must also be complemented with obligations. Meanwhile, the party responsible for environmental rights are the state, who, relative to its civilians, are seen to be a lot more powerful and influential. Environmental right binds and restricts the country's freedom to exercise their legislative power, executive power, and judicial power. These forms of restrictions are meant as a defensive function for the civilians' environmental rights and interests against actions of infringements by the state. In case this happens, any civilian may initiate an environmental administrative public interest litigation. While it is true that environmental rights can be considered as a form of social rights, it also shares the features of other social rights such as duality, and rights to freedom. As a theoretical basis, environmental rights have crucially influenced the establishment and development of environmental administrative public interest litigation systems in a way that they are interdependent and mutually constraining. If environmental rights are the basis, then environmental administrative public interest litigation systems act as the protective umbrellas. The opposite is also true, without environmental rights as a foundation, environmental administrative public interest litigation systems would not become effective in any way.

II. Status Quos of Countries Adopting the Environmental Administrative Public Interest Litigation in the Asian Region

Japan, India, South Korea, China, and many other countries have established their own

provisions concerning their respective environmental administrative public interest litigation; they also have differences in terms of their specific names and structures of the system. For example, environmental public interest litigation of India and of South Korean people-initiated litigation are representatives of Anglo-American legal system, while among the representatives of Mainland China legal system, residents-initiated litigation of Japan, and environmental administrative public interest litigation of China are two of the most significant legal systems to be studied. Research on comparisons of related systems between the two major legal systems have indicated that despite the different names they are given, all of them have not denied the importance of protecting environmental public interest, which is to further understand the modes of environmental administrative public interest litigation system in the Asian region in accordance to their respective plaintiff's qualification, scope of litigation, fees, etc, as stipulated in the legislation. Particularly in emphasis of the study are the relationship between Japan's common civil litigation and residents-initiated litigation, the procedures adopted in India for establishing citizens' environmental rights through a series of cases, various environmental public interest lawsuits filed by many non-profit environmental non-governmental organizations (NGOs) in South Korea, as well as cases of setting up pilot regions, expanding its scope, until the formal confirmation of legislation for environmental administrative public interest litigation in the recent few years in China. These examples are believed to be very helpful in terms of further understanding the environmental administrative public interest litigation systems in the Asian region. In this paper, the author has adopted a method of comparative analyses by making comparisons on the environmental administrative public interest litigation systems of countries basing their laws on the Mainland China's legal system (such as Japan and China), and the Anglo-American system (such as India and South Korea). By doing so, the drawbacks in structures of the respective environmental administrative public interest litigation systems could be further evaluated, and the corresponding improvement strategies have been achieved.

II.1. Japan

There are four modes of litigation applicable in Japan, they are: people-initiated, organizational body-initiated, litigant-initiated, and countersue litigations. Meanwhile, scholars have also made two bigger distinctions for the litigation modes in the country, they are: subjective and objective litigations. The former is aimed at protecting the civilians' individual rights and

interests, while the latter is for the maintenance of objectivity with respect to the code of conduct. With that as a basis, people-initiated litigation falls to the category of objective litigation. In Japan, the people-initiated litigation is meant to rectify the unlawful flaws of administrative organs by the encouraging people to bring the cases up to the court. This mode of litigation has also been prescribed by the Japanese civilization. Moreover, there are also minimal limitations set onto the plaintiffs of a people-initiated litigation; common civilians are allowed to file for a people-initiated lawsuit, without the need to possess any forms of interest relationships with the alleged administrative acts. There are not many recognized cases of people-initiated litigation, but out of the existing ones, four types of categories can be made, they are: first, litigations for qualifications of public office elections; second, litigations for matters related to direct request; third, residents-initiated litigations; and fourth, residents-voting litigations and litigations for national review of the Supreme Court (Romanji: *Saikō-Saibansho*) judges, which are stated in Article 95 of *The Constitution of Japan* (Romanji: *Nihon-Koku Kenpō*). One of the few limitations set for the plaintiffs of residents-initiated litigation would be for s/he to be a Japanese national. Strictly speaking, residents-initiated litigation belongs to the people-initiated litigation category. There is a fear for over-usage of residents-initiated litigation rights, which could influence the administrative body's execution of service. In order to prevent any of such negative influence to the functions performed by the administrative bodies due to over-usage of lawsuit filing rights by the civilians, in addition to the aforementioned nationality restrictions for plaintiffs, another limitation has also been set for residents-initiated litigation, namely the prior procedures for inspection application. This procedure will be held during the application for the right to inspect, and it requires the civilians to file for a lawsuit against a specific party and a set of illegal acts.

II.2. India

The development of environmental administrative public interest litigation in India begins from the 1970s, and is continuously advancing towards a better state. India is in fact a front-runner of this respect among the other Asian countries. To be specific, as early as 1986, the Indians have enacted a public interest litigation article within their environmental law, and have also limit the jurisdictions of environmental litigation against the federal government, central government, and municipal authorities, among many other national institutions, and not against individuals. Therefore, the public interest litigation under the Indian environmental law can also be categorized

as an environmental administrative public interest litigation. In practice, the Indian judiciary has provided the "environmental rights" with basic and relief rights, thus promoting the development of many other procedural rights. Lawyers would normally untap the potential of these articles by proposing relevant rights for the public interest lawsuit. In 1991, during the investigation of the "Suhhash Kumar v. State of Bihar" case, in order to fully realize the environmental condition as stipulated in "Constitution" Article 21, which guarantees the rights to live, including the rights to be free of polluted air and waters, the Supreme Court has acknowledged that the rights to healthy environment shall be considered as a part of the rights to live.

The courts' contributions to the modes of India's environmental administrative public interest litigation are enormous, for instance, in the "Sheela Barse v. Union of India" case, the Indian Supreme Court believed that the "Constitution" have given the state the constitutional obligation to protect the citizens' basic rights. In order to realize this goal, the Supreme Court was believed to possess all the accompanying rights, which include the power to establish and implement new methods of relief to protect the basic rights of the citizens. Three distinctive characteristics can be observed from the environmental administrative public interest litigation system in India: First, is the relaxed qualification on the litigants. For one, any individuals or organizations are allowed to file for the lawsuit, and the other, litigants are not required to provide any proofs on whether they are directly related to the case. Second, written-form judicial authority. The very first case where the written form judicial authority was used in the field of environmental public litigation was the "Rural Litigation and Entitlement Kendra，Dehradum v. State of Uttar Pradesh" case heard by the Indian Supreme Court in 1987. This is a novel innovation specific to India's environmental administrative public interest litigation system. During the course of the legal proceedings, an individual many often need to spend a certain amount of time and economic cost, which overall expenditure may often proof to be difficult to handle. To account for this, the Indian court requires the individual or organization to request the court through a written letter to publish all the relevant information to the public, thereby allowing the litigation to be instigated. Third, the court's investigation mechanism. Taking as an example the historical environmental public interest lawsuit case: "M. C. Mehta and another v. Union of India", wherein an absolute liability with exempted reasoning has been formally established. This is also the case that led to the official promulgation of the "National Environmental Court's Act", and the setting up of environmental courts. The issues addressed in the litigation may often involve a certain amount of

relevant expertise, which the court may be lacking. To tackle this problem, the court will implement a set of technical measures, and although it may not involve a massive investigation on the matter, a committee or a group of experts will still be assigned to proceed with the relevant investigations, which final report will be submitted to the judge-in-charge.

II.3. South Korea

Due to a certain degree of influence from the Western countries, South Korea has seen its development of environmental administrative public interest litigation progressing in a relatively good manner, thrusting them as one of the front-runners in the field among the other Asian countries. In the construction of public welfare activities, for instance, the country relies on their mechanisms of system construction, filing of public interest lawsuit, provision of public welfare services, etc. To be specific, in the system construction phase, public interest organizations and their lawyers will adopt a method involving litigation and non-litigation that will "force an upset and reverse" the positive progress of the system. In the public interest lawsuit filing phase, litigation options are diversified, which may involve constitutional litigation, administrative litigation, civil litigation, criminal litigation, etc. And as the country develops and improvements are made, public interest litigation has shown gradual transformation towards a more comprehensive state, from the emphasis on constitutionalism and human rights, into an all-round development of the system, and finally expanding into the areas of gender equality, social and economic rights, environmental protection. The litigation system also looks towards ensuring operational obligation and transparency of enterprises, achieving a reasonable administration policy, information disclosure, protection of privacy, etc. The current administrative litigation in South Korea can be classified into four distinct categories, described as follows:

First, the ordinary litigation, which mainly deals with extraction of administrative acts and its litigations. It covers the revoke litigation, which involves the withdrawal or the rectification of illegal administrative acts; then the invalid confirmation litigation, which involves the identification of invalid or inexistent administrative acts; and also the illegal confirmation litigation, which involves the identification of illegal administrative acts and inactions.

Second, the enterprise group litigation, which mainly concerns the issues of administrative acts, contractual agreements, and other areas of legal justice, involving a small number of plaintiffs. This type of litigation, though administrative in nature, shares a huge similarity with its counterpart

in the civil litigation category.

Third, is the people-initiated litigation, which is characterized by the filing of a lawsuit against an administrative act by a plaintiff who does not have any direct relationships in terms of interest with the case. However, it needs to be noted that an unambiguous provision by the law is still required before the litigation can be started.

Fourth, the organizational body-initiated litigation, which deals with the issues of whether authority is to be given among two or more state administrative bodies or public organizations, as well as their respective problems in exercising the said authority.

Although it could be observed that most of the public interest litigations falls to the classification of civil litigation, but when it comes to environmental protection, the civilians of South Korea request civil compensations from individuals and companies mainly by the means of civil litigation.

II.4. People's Republic of China

The history of development for China's environmental administrative public litigation is still relatively short; by second half of the 20th century, theoretical research phase was still underway, and any tangible forms of breakthroughs had not yet taken place. After years of exploration and practice, the year 2007 marks the enactment of the first ever litigation article at the Intermediate People's Court in Guiyang, Guizhou Province. The article was entitled as *The Rules of Case Admission and Its Jurisdiction, as Issued by the Intermediate People's Court in Guiyang City and the Municipal People's Court of Environmental Protection in Qingzhen City*. The very first environmental administrative public interest lawsuit was in fact filed based on this rule.

In May 2009, the plaintiff of the said case, China's Environmental Protection Association sent out investigation teams to perform an on-field investigation, immediately after the group lawsuit was received, originating from Qingzhen city of Guizhou. Having completed the investigation, a lawyer's letter was issued on the 8th of July, which was sent to Qinzhen Land and Resource Bureau, indicating the alleged party to withdraw the right of land's usage as well as the buildings and other related structures, all within 10 days after the letter's delivery. The alleged party should also eliminate any potential harms caused by these structures onto the surroundings of Baihua Lake Scenic Spot. Unfortunately, Qinzhen Land and Resource Bureau was unable to

exercise its obligations on time. By 27th of July, 2009, China's Environmental Protection Association brought up an administrative public interest lawsuit to the Qingzhen Municipal People's Court in Guiyang province, requesting the court to take legal actions against Qingzhen Land and Resources Bureau, asking them to withdraw the land contract signed by Mr. Li Wanxian to sell the rights of land usage, together with all the buildings and related structures on the land, which accounts for the 800 meters square land on the number 4 construction site, located at Baihua Lake County Sanbao Village Tunpojiao construction site. The court session was opened on 9 A.M. in the 1st of September at the Qingzhen Grassroot Court, which was attended by the the Bureau's Vice Deputy as the representative of alleged party. Because the alleged party had made the decision to withdraw the cold drinks area and the land project's right of usage from the Baihua Lake Scenic Spot on the 28th of August, which happens before the opening of the court, the litigant had also decided to revoke the litigation.

As China's first ever environmental administrative public interest lawsuit filed by a social organization, its influence and practical significance towards the succeeding cases in the field was enormous. But without the legal basis at the national level, the development of China's environmental administrative public interest litigation was slowed down, until the Amendments of the new Civil Litigation Law and the new Environmental Protection Law was implemented in 2012 and 2015 respectively. The above amendments have clarified the plaintiff qualifications of state organs and social organizations, but had not done enough on the specifics relevant provisions for the environmental administrative public interest lawsuit.

In order to accelerate the protection of national interest and social public interest, by July 1st, 2015, the Fifteenth Session of the Standing Committee's Meeting of the Twelfth National People's Congress concluded with the following decision: "We hereby approve the Supreme People's Procuratorate to initiate the establishment of pilot regions for proposals of public interest lawsuits covering the fields of ecological environment and resource protection, protection of state-owned assets, transfers of state-owned land usage rights, safety of foods and drugs, etc. The pilot regions have been confirmed to comprise of thirteen provinces, autonomous regions, and state-governed municipalities. The People's Court shall accept and conduct a hearing on any public interest lawsuits filed by the People's Procuratorate, according to the law." Following the decision, on July 3rd, 2015, the Supreme People's Procuratorate released the *Proposal for Implementation of Public Interest Litigations in the Pilot Regions As Issued by the People's Procuratorate*.

According to statistics, until December 2012, regional courts across the country have in total accepted the hearings of thirty-seven cases of environmental public interest lawsuits, comprising of thirty-three cases of environmental civil public interest litigations, and four cases of environmental administrative public interest litigation, with a ratio of 89.2% to 10.8%. Among the total of 1668 cases of pre-trial procedures handled by the pilot regions, 1591 cases were administrative public interest pre-trial procedures, 1214 cases were rectifications of illegal administrative acts or execution of administrative functions, 77 cases were civil public interest pre-trial procedures, while the remaining 17 were related to lawsuits filed by relevant social organizations. Until September 2016, among the 42 lawsuits filed by procuratorates in the pilot regions, there were 28 cases of administrative public interest litigations (12 of these were environmental administrative public interest litigations), 13 cases of civil public interest litigations, and one case of civil-attached administrative public interest litigation. Also, 8 cases were adjudicated on first review by the People's Court, all of which fully supported the request for litigation made by the procuratorates. There was also one case of civil public interest litigation which concluded through mediation, one case of civil public interest litigation in which involved the participation of other qualified subjects, two cases of administrative public interest litigations due to illegal administrative acts which were followed by rectification of such acts after the lawsuits were filed, and eventually concluding with cancelations of litigation. As could be observed from the above data, the decision to establish "pilot regions" were rational, constructive, and effective.

On the afternoon of 27th of June, 2017, when the Twenty-Eight Session of the Standing Committee Meeting of the Twelfth National People's Congress was held, the decision on the amendment of civil litigation and administrative litigation had been passed. The procuratorial organs filed the public interest lawsuit, and also included the two laws.

The Twenty-eighth Session of the Standing Committee Meeting of the Twelfth National People's Congress had decided: that the *Civil Litigation Law of the People's Republic of China* should be amended with the addition a paragraph in Article 55, as its second, which states that: "The People's Procuratorate had found, during the performance of its functions, that in the fields of ecological environment and resource protection, as well as food and drug safety, for any violations of the legitimate rights and interests of many consumers, and infringements to the public interest, relevant lawsuits can now be brought up to the People's Court, even with the absence of

the institution or organization as stated in the preceding paragraph, or without the presence of the lawsuit filed by the organization or institution as stated in the preceding paragraph. Should the institution or organization as stated in the preceding paragraph initiates a lawsuit, the People's Procuratorate may support the litigation." The *Administrative Litigation Law of the People's Republic of China* have also been amended, with the addition of one paragraph in Article 25, as its fourth, which states that: "The People's Procuratorate had found, during the performance of its functions, that in the fields of ecological environment and resource protection, food and drug safety, protection of state-owned property, the transfer of rights of the state's land's usage, etc., should any of the administrative organs with which supervisory and regulatory obligations was burdened upon, be involved in any forms of illegal exercise of power or inaction, that results in the breach of national interests or social and public interests, the said administrative organs should be advised to take on inspection proceedings, and be urged to perform their functions according to the law. Should the administrative organ fail to perform its duties according to law, the People 's Procuratorate shall lawfully bring a lawsuit to the People' s Court." These additions and amendments are to take effect as per 1st of July, 2017.

From the confirmation for formal legislations of China's environmental administrative public interest litigation system through a local government meeting, it could be deduced that the environmental problems are prominent, and has reflected the civilians' urgent demand for protection of personal environmental rights. This does not only demonstrate the democratic nature of China's legislative system, but more that it points out the inevitable obligations and responsibility of the country in the field of environmental protection. The current revisions of relevant provisions have symbolized the perfection of China's environmental public interest litigation system in terms of its legislation proceedings. Alternatively, the revision has also indicated the increased level of government's awareness with respect to environmental problems, which provided guarantees for civilians environment rights and interests from legislative aspects.

III. The Status Quo of Environmental Administrative Public Interest Litigation in the Asian Region and Improvement Strategies

III.1. The Current Environmental Administrative Public Interest Litigation System in the Asian Region

As mentioned previously, although the current trend in protecting the legitimacy of civil environmental rights in the Asian region is mainly done through the environmental civil public interest litigation. It should be acknowledged that this approach had not only played an indispensable role to the maintenance of environmental public interest, but had also brought to it many uniqueness and advantages, such as the promptness and professionalism of the legal proceedings, as well as the opportunity for civilians to take an active step. However, it is also due to such intrinsic uniqueness that had determined its limitation towards the matters of civil public interest protection, which can be reflected into the following aspects. Firstly, is the degree of relevance to the party of interest. Just like many other types of public interest litigations, environmental civil public interest litigation requires a certain amount of relevance towards the party of interest, this is especially true in countries whose legal system is established based on the Anglo-American system. Most of these countries will require the plaintiff to own the corresponding relevance to his/her interest before the civil public interest lawsuit can be filed. In South Korea for instance, before any individuals or organizations could proceed with the litigation, they will need to provide the relevant evidence to interest impairment so that the tangible nature to the matters of rights infringement could be determined. Secondly, is the subsequent nature of the litigation. Generally, in Asia, environmental civil public interest litigation can only be initiated after the occurrence of the environmental pollution. There were scarcely any laws that expect the lawsuit to be filed before the occurrence of pollution. One reason is of course; no economic compensation could otherwise be issued. But the inclination of filing environmental civil public interest lawsuit just for the sake of economic compensation has, by itself, deviated from the original objective of public interest lawsuit. Thirdly, is the ambiguous definition of the term "public interest". In most cases, particularly in the recent years, the general public have proposed narrower definitions of their understandings to the term "public interest litigation", or, according to the definition given by *Black's Law Dictionary*, the term is referred to as "the legal practice that promotes social justice or any public welfare undertakings". However, as for the majority of environmental civil public interest litigations in Asia, no legal basis for the relevant rights has been established, nor is there, in simpler terms, a systematic definition or modes of operation for the litigation.

The object for protection in environmental administrative public interest litigation is the public interest, and so the fundamental aim for civilians' environmental rights are the realization

of "environment protection and improvement, rational consumption of natural resources, as well as prevention and treatment of pollution and other forms of public nuisances", rather than private and public rights in its traditional meanings. In an environmental administrative public interest litigation, the plaintiff's requests include request for amendments and modifications to relevant policies and scale of industries, request for prohibiting the undertaking of environmentally destructive activities of production, operation, and construction. Such conditions can be referred to as prohibition-aimed litigation. In other words, the contents of requests in an environmental administrative public interest litigation has now included not only the request for implementation of relief measures towards previous and existing incidents, but has also pointed its fingers towards the future, with the significance of preventing or mitigating the destructive consequences of the impairment of environmental public interests. The nature and forms of defendant' infringement of rights in an environmental administrative public interest litigation, as requested by the plaintiff to be prohibited, have gradually developed from a specialized and visible extent in a traditional litigation, into an uncertain and formless direction. Or, this could also be understood as the infringements' transformation of state from a physical aspect into a mental aspect, such as those that concerns a healthy life. In an environmental administrative public interest litigation, the nature of relationships between interests and losses are either public or group-oriented, and the scope of interest covered are also wider. Traditional environmental litigation is aimed at balancing the plaintiff's litigation requests. The court will adjudicate based on the relationship of interests between the parties involved, and the adjudication can only involve both conflicting parties, or under certain conditions, may also involve a third party in case s/he is not bound for judgement. The area of influence also covered only both parties and the people in their respective surroundings. On the contrary, in an environmental administrative public interest litigation, because all the claims made by the parties are inherently involving contents of public interests, the relationship of interests between the parties are therefore public and group-oriented. Consequently, the area of effect will demonstrate characteristics of area-widening and boundary-limited spreading. The plaintiff's requests are mainly focused at the court's response through prohibitive or declaratory measures to influence or make changes to the environmental public policy. The judgements made in this type of lawsuit will not only place direct restrictions on the litigants to the case, but also generate influence, as well as restrictive and guiding forces onto the general public who are not involved in the lawsuit.

III.2. The Drawbacks of Current Environmental Administrative Public Interest Litigation System in the Asian Region

1. Limited Qualification for the Plaintiffs

The plaintiff qualification of the environmental administrative public interest litigation system can, from a certain perspective, reflect the level of restrictions placed by judicial review authority on that of the administration, therefore it is essential to first clearly define the qualification of the plaintiff in environmental litigation. However, there are still signs of inadequacies in terms of the standardization and identification of the plaintiff qualification in this regard. For example, in Japan, in the case of a litigation's withdrawal, the plaintiff's qualification is such that, s/he must be labeled as "legal interests" in the request for penalties of withdrawal" and has an ample relationship of interest with the case. Generally, there are two factors which determine the plaintiffs' qualification: (1) the probability of getting substantial damage due to environmental problems (2) the benefit is labeled as "benefits of protection as granted by the law". However, the primary purpose of administrative restrictions and control in Japan is to maintain social and public order rather than the civilians' personal interests, hence it is difficult for the civilians to be lawfully recognized as the plaintiff to the administrative public interest litigation. In Taiwan, civilians and non-governmental organizations are given plaintiff qualification, whereas the state institutions are not. Although this example could be used to determine the independence and neutrality of the judicial system, it could also show just how much emphasis has been allocated on private interest with respect to the environmental administrative public interest litigation in the Taiwan region.

2. Limited Scope of Case Acceptance

Because of the characteristics of administrative litigation, not all administrative litigation will be accepted. Relative to the ordinary litigation, the most prominent feature of administrative litigation lies in its stipulation of the scope of litigation, which means that it is necessary to meet the requirements of the as stipulated in administrative litigation before the plaintiff's lawsuit could even be accepted, so it is also true that those which are seen as not legitimate will not be accepted. For example, in Japan, the limitations of all kinds of administrative regulations is determined based on the consideration of a specific public interest oriented goal, which is the protection of social public safety, not based on the objective of protecting the private interests of every civilians. The

consequence of the restrictions is such that any interests granted to the civilians would not be legal in nature, but rather the result of propagation from relevant litigations. This theory causes the scope of litigation acceptance in Japan to be overly narrow. Additionally, important elements such as penalties and interest litigation further narrow the scope of acceptance, for instance, legal system in Japan would categorize existing administrative penalties as unacceptable, therefore excluding implementation of public services through the means of interest litigation. As another example, in the Hong Kong region, other than being required to have ample relationships of interests and losses, plaintiffs are also required to pass a standard for complaints, or in other words, "a case that possesses a reasonable argument", or "a previous case with a successful background". These prerequisites have consequently resulted in the exclusion of almost all possibility theory supported cases of administrative public interest litigation.

3. Ambiguous Definitions to Environmental Rights

The rights to litigation, similar to the rights to request, is such that its proposal is normally based on a certain set of entity rights. In Asian countries however, the case is either because environmental rights are not yet enacted to the legal system as entity rights, or, even if it has been enacted and listed under the articles of rights, it has yet to be implemented in any practical application. As a result, for judicial practices in Asia, civilians who filed the environmental lawsuit based on the violation of his/her own environmental rights will usually get rejected. Currently, environmental rights are still very much an academic concept. For example, in the Special Administrative Region of Macao, there are environmental protection related laws such as the *Basic Law of the Macao Special Administrative Region*, which is an international treaty, and the *Framework of Environmental Law*, which is not conflicting with the Basic Law. Under these laws there are also provisions allowing environment related public interest litigations, but due to the lack of indication with regards to the civilians' environmental rights, the desired effects could not be attained thus far. As another example, in Japan, although there is a detailed set of provisions for the relevant environmental rights, but its scope is just too narrow, and therefore it cannot effectively guarantee the citizens' "rights to enjoy the beautiful environment".

III.3. Improvement Strategies for The Current of Environmental Administrative Public Interest Litigation System in the Asian Region

1. A wider scope of plaintiff qualification

On one hand, some countries in Asia, the development of environmental administrative public interest litigation is such that the citizens have not yet been given the qualification as a subject in personal litigation, the reasons of which are quite complex. However, whether it is from the point of view of successful experience from a foreign country or whether the constitutions of each country have granted every civilian the right to supervise, the fact that civilians are now considered as the subject in environmental public interest litigation, is not only becoming the contemporary development trend, but also more of the demand for perfection in terms of development of legal systems. On the other hand, it is the case in many countries in the Asian region that in addition to applying a set of plaintiff qualifications for administrative public interest litigation, restrictions such as ample relationship of interests and losses are also added into the minimum requirements for the plaintiff qualifications. It is also due to judicial neutrality that a country would not grant the state institutions the relevant plaintiff qualifications. This is also the reason why environmental administrative public interest litigation could eventually evolve into the unilateral clash between the civilians and the state.

In order to further develop the administrative public interest litigation, especially that of the environmental public interest litigation, while reducing the damage caused by environmental problems, other than adopting a wider range of plaintiff qualifications, the state organs and its corresponding supervisory functions should be further strengthened, so as to safeguard the environmental rights of citizens and protect social interests. This is the most important objective. But in order to limit the excessive use of rights, a systematic approach should be adopted when it comes to designing the prior procedures for environmental administrative litigation. This is also very essential.

For example, in the Taiwan region, Article 34 of the *Eco-Environmental Law* states that: " Should governments at all levels neglect the execution of its functions, the people or the public interest groups may, in accordance to the law, file a lawsuit to the “administrative court” with the government’s authoritative department as the defendant.” Although It is clear that the Taiwan area it does not grant the state organs a relevant plaintiff qualification in the public interest litigation, but for citizens and public interest groups, they have been given a wider scope of plaintiff qualification in a public interest litigation. As for the case of relevant laws and regulations in the Macao Special Administrative Region, of the three subject categories for plaintiff qualification in a public interest litigation, in addition to citizens, public interest organizations, and state organs,

which we are very familiar with, there are also individual business partners or companies.

2. A wider scope of acceptable cases

In order to fully achieve the purpose, with respect to public interests, of environmental administrative public interest litigation, the scope of acceptance for environmental administrative public interest litigation should not be too narrow, but in order to also prevent excessive abuse of rights to file a lawsuit, the scope of case acceptance should also not be too wide. First of all, a regulation should be added into the environmental administrative public interest litigation system that clarifies the acceptance of abstract administrative acts performed by any environmental administrative institutions. Second, should any administrative departments in the field of pollution prevention and treatment not performing their functions in accordance to the law, they will also be made accountable for their actions. Because of so, inactions of administrative organs with respect to the protection of environmental public interests, especially the likes of cases involving inactions to environmental destruction and pollution, as well as those involving inactions to illegal exploitation of natural resources, should also be grouped under the category of acceptable lawsuits. Thirdly, in order to prevent citizens from inadvertently filing a lawsuit on unimportant offenses, systemization of litigation procedures should be realized, in order to provide clarification on the boundaries of public actions. For example, in the Taiwan region, because of the highly specific decisions in terms of ecological environment, it is often very difficult for people or public interest groups to prove that their rights and interests have been violated. Such difficulties also include the difficulties to prove the causal relationships and time distribution, which explains the main reasons to large occurrences of illegal acts related to the ecological environment, and also how these offenses are not met immediately with an effective form of punishments. The plaintiffs have adopted the "possibility theory" to the obligation of evidence provision for their damages to rights and interests. In other words, if there is any possibility for damage, the case would not be excluded, and will be seen as an appropriate litigant criterion. This would further expand the scope of acceptance for environmental administrative public interest litigation, and to a certain extent, broke out of the original relationships of interests; this is in fact the original purpose of public interest litigation.

3. A clearer definition for environmental rights

First of all, the basic environmental rights for citizens should be determined through

legislation, so as to achieve the balance of rights and obligations. Second, at the constitutional level, further clarifications on civil environmental rights, in a more articulated and specific forms, should also be made, so that effective prevention of any potential violations of public environmental rights by relevant laws and regulations set by any related governmental organs could be realized. Thirdly, ample interest relationships should be further weakened or eliminated. Furthermore, protection of citizens' rights and interests, maintenance of social and public interests, as well as finding solutions to environmental disputes through the state's power should also be realized. In India, for example, the courts often combine the constitutional environmental protection principles with the basic rights, such as the rights to live, which leads to the derivation of environmental rights. The Supreme Court, through judicial interpretation, has included in the rights to live the rights to a clean environment. The association between environmental quality and the rights to live was first confirmed in the "Charan Lal Sahu v. Union of India" case, through a hearing in the Constitutional Court of the Supreme Court. The Hong Kong Special Administrative Region has also determined the basic rights of citizens and their environmental rights through the bases of *the Basic Law of the Hong Kong Special Administrative Region*, *the Hong Kong Bill of Rights Ordinance* and various other international environmental conventions to which Hong Kong is a member of. Especially after the reunification of Hong Kong, through the combination of *the Hong Kong Bill of Rights Ordinance* and *the Basic Law of the Hong Kong Special Administrative Region*, as well as the utilization of constitutional judicial review, any potential violations of the citizens' environmental rights by the filing of the draft legislation or any relevant laws can be prevented.

Conclusions

The lack of legislation in environmental administrative public interest litigation makes the citizens, procuratorial organs and social organizations have suffered heavy obstacles in the judicial practice. As a result, the environmental protection right of the citizens has not been maintained, and the environmental pollution situation has been continuously expanded, which wreck havoc on the socio-economic sustainable development. Therefore, it is crucially necessary to further improve the environmental administrative public interest litigation system in the Asian Region, ensure proper implementation of relevant laws and regulations, and strengthen the restriction on the illegal administrative acts of administrative organs. Of course, as the establishment and improvement of any system cannot be achieved overnight, the environmental administrative public interest litigation in the Asian Region is still in the stage of exploration and development, with many problems in legislation and practice yet to solve. The clear definition of environmental rights, the further expansion of the scope of accepting cases, the increased range of plaintiff qualification are severe problems faced by the future environmental administrative public interest litigation in the Asian Region, be it for legislation or for system improvement. What are more worthy of mentioning and should be the key point deserving our attention, are whether or not government departments can effectively protect the citizens' environmental rights through the existing administrative public interest litigation legal system, and whether or not we can achieve a certain sense of environmental justice.

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