

# A New Discussion on the Role of Chinese Government in the Lawsuit of Ecological Environment

Hongbin Ding<sup>1</sup>, Danli Gao<sup>2, \*</sup>

<sup>1</sup>The center of coordination and innovation in Western China, Sichuan University, Chengdu, China

<sup>2</sup>Chongzhou people's court, Chengdu, China

\*Corresponding author e-mail: 445353252@qq.com

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**Abstract:** All in China, the judicial cases of destroying the ecological environment appear in various forms, in which the government plays different roles and has different litigation status, of course, there are also some obvious problems. This paper uses case analysis method, legal text analysis method, through the analysis of the problems of typical cases published by the government, trying to find a new position of the government in the public interest litigation involving ecological environment.

## 1. Introduction

In the judicial field, China has its own environmental protection rules. Under the background of "high pressure of environmental protection", there are five kinds of ecological environment cases in China: one is compensation litigation for ecological environment damage, the other is civil environmental public interest litigation, the third is environmental administrative public interest litigation, the fourth is environmental criminal litigation, and the fifth is environmental civil tort litigation against ordinary natural persons and individuals. At present, the prosecution principle of China's ecological environment cases is "the procuratorial organ is the main plaintiff and the government and ENGOs is the auxiliary plaintiff". The goal of this paper is to change this principle.

## 2. Questions Raised

In the litigation cases involving ecological environment, the function of government is special. On the one hand, the government is responsible for the administrative supervision of ecological damage; on the other hand, it can be used as the plaintiff of civil disputes in the ecological damage compensation litigation. In the process of court hearing cases involving ecological environment damage, the multiplicity of government functions, the uncertainty of rights and responsibilities positioning and the universality of the scope of action cause some confusion in the current judicial trial stage. In the official published cases, the parallel situation of two lawsuits (cases 1, 2 and 3) is a reflection of many chaos, which is "the government first sues, the procuratorial organ or the public welfare organization then sues, or the procuratorial organ and the public welfare organization first sues, the government then sues".

Case 1: on March 14, 2016, China Biodiversity Conservation and green development foundation (CBCGDF) sued Shandong Jincheng heavy oil Chemical Co., Ltd., Shandong Wanda organosilicon New Material Co., Ltd., Shandong Hongju new energy Co., Ltd., Shandong Linfeng Chemical Technology Co., Ltd. and Shandong lifengda Biotechnology Co., Ltd. the plaintiff claimed that the waste alkali liquid dumped by the five defendants It caused soil pollution and damaged the public interest, so it was sued to Jinan Intermediate People's court, which has accepted it.

Case 2: on August 23, 2017, the Department of ecological environment of Shandong province (SPDEE), based on the same soil pollution fact of case 1, filed a lawsuit against the ecological environment damages of Jincheng company and Hongju company with the intermediate people's

Court of Ji'nan City, which was accepted by the court, and made a judgment basically according to the lawsuit request of SPDEE.

Case 3: on July 26, 2017, the first intermediate people's Court of Chongqing decided to jointly try two lawsuits brought to the court by Chongqing Municipal People's government (CM) and Chongqing Liang jiang volunteer service development center (CLVSDC) based on the same illegal emission fact. The two plaintiffs hold that the two defendants (Shouxu environmental protection Co., Ltd. zangge company, Chongqing Shouxu Environmental Protection Technology Co., Ltd.) caused serious water pollution due to illegal sewage discharge, and require them to bear the responsibility for ecological environment damage compensation and environmental restoration.

**Table1.**Three cases comparing

Case number	Plaintiff	Litigation requests	Judgment results	Court time	Types
Case1	CBCGDF (ENGO)	Stop dumping hazardous waste immediately	Support	March 14, 2016	soil pollution
		Compensation for the cost of ecological environment restoration	Unsupporte d		
		Compensation for loss of service function	Unsupporte d		
		Apologize to the whole society	Support		
		Compensation for legal costs, attorney's fees and other expenses	Partial support		
Case2	SPDEE (GOV)	Compensation for economic losses caused by emergency disposal	Support	August 23, 2017	soil pollution ,Same as case 1.
		Compensation for ecological damage	Support		
		Apologize to the whole society	Support		
		Other reasonable expenses	Support		
Case3	CM (GOV)	Compensation for the cost of ecological environment restoration	Support	July 26, 2017	Water Pollution
		Compensation for legal costs, attorney's fees and other expenses	Support		
	CLVSDC (ENGO)	Compensation for the cost of ecological environment restoration	No response		
		Compensation for legal costs, attorney's fees and other expenses	Support		
		Apologize to the whole society	Support		

Information from table 1,we can make an in-depth observation of the apparent contradictions and internal legal principles of three typical cases, and find that there are still many problems to be discussed in the current ecological environment damage litigation fed back by such cases:

First, whether the prosecution of the government and public organizations has priority. In case 1 and case 2, CBCGDF filed environmental civil public interest litigation before SPDEE filed ecological environmental damage compensation litigation. Why did the former litigation have to be suspended temporarily to wait for the result of the latter litigation? What is the basis for the court to

suspend the CBCGDF litigation? Is there a better way to deal with it? In case 3, why did Chongqing No.1 Intermediate People's court not follow the practice of Jinan Intermediate People's court and decide to suspend the environmental civil public interest litigation brought by CLVSDC, but try two cases together? China's law stipulates that "environmental civil public welfare and ecological environmental damage compensation" are two kinds of lawsuits with different natures. What's the rationality of the court's decision to try these two kinds of lawsuits jointly? Combined with cases 1, 2 and 3, does the judicial trial habit of the court acquiesce that the applicable rank of environmental civil public interest litigation is lower than that of ecological environmental damage compensation litigation? Or should we acquiesce in the convergence of the two litigious natures, which is unnecessary and should be merged? The current judicial practice of the above-mentioned problems is still in a dilemma.

Second, how to balance the government's administrative punishment and the court's judgment on the defendant's punishment. In case 3, the first intermediate people's Court of Chongqing decided that two defendants should bear both the cost of government litigation and the cost of litigation of Liang jiang volunteer service organization. Is such a judgment fair to the defendants? If at the stage of accepting the case, the court can decide not to accept any lawsuit of the municipal government or Liang jiang volunteer service organization, or establish the system of "first sue, first try, then sue, not accept", can we avoid the unfair situation that the defendant bears the double litigation cost? In addition to being required to bear the double litigation costs in the litigation, the two defendant companies and their main principals have been subject to serious administrative and criminal penalties before. From the perspective of the protection and fairness of the defendant's litigation rights in the case of ecological environment damage, one of the major problems at present is how the government, non-governmental public welfare organizations, procuratorial organs and courts should coordinate and cooperate to balance the punitive nature of the defendant's administrative, civil and criminal judicial responsibilities in the case of ecological environment damage?

Third, from the three aspects of "civil cause of action", "litigation request" and "judgment result", it is difficult to find out the fundamental difference between the two kinds of litigation, which are the compensation litigation for ecological environment damage and the civil public interest litigation for environment. In terms of the cause of action, both Shandong Environmental Department and China Green Development Council sued for soil pollution liability disputes. In case 3, Chongqing municipal government and Liang jiang volunteer service organization sued for water pollution liability disputes. In terms of litigation claims, Shandong Environmental Department, China Green Development Council, Chongqing municipal government and Liang jiang volunteer service organization all require the defendant to repair the environment and compensate for the loss of service function during the restoration period. In terms of the judgment result, the first intermediate people's Court of Chongqing in case 3 did not see the difference between the environmental civil public interest litigation and the ecological environmental damage compensation litigation. If any litigation is brought separately, the judgment effect of the judgment item can be achieved. The author's question is whether the compensation for ecological environment damage is basically equal to the "civil cause of action", "litigation request" and "judgment result" of environmental civil public interest litigation? If the nature is basically the same, is it necessary to set up two litigation systems? What is the difference between the two in the current system and how to distinguish them clearly in the judicial trial?

### **3. The Status of Government in the Current Ecological Environment Litigation**

#### **3.1. Three Roles of Chinese Government**

The obligee in the lawsuit of compensation for ecological environment damage. In 2017, the central government of China issued the reform plan for the compensation system for ecological environment damage, which stipulates that the central government of China authorizes provincial and municipal governments as the right holders of compensation for ecological environment damage within its administrative region. The Supreme People's court's Several Provisions on

hearing cases of compensation for ecological environment damage also reconfirmed the subject status of government prosecution of the obligee of compensation for ecological environment damage. Therefore, the provincial, municipal and local governments are the obligees in the ecological environment compensation litigation.

The defendant in environmental administrative public interest litigation. In December 2015, the Supreme People's Procuratorate, through the measures for the implementation of the pilot work of people's Procuratorate in initiating public interest litigation, clarified that the government can become the defendant of environmental administrative public interest litigation under certain conditions.

Evidence providers, witnesses and other supporting roles. After the occurrence of the case of ecological environment damage, the government is responsible for supervision. Generally, the government will immediately go to the polluted place for preliminary illegal evidence collection, and order the polluting enterprises or individuals to stop the illegal acts. Therefore, in environmental civil public interest litigation, environmental criminal litigation and environmental tort litigation against ordinary natural persons or units, the plaintiff will generally first apply to the government for obtaining evidence.

### **3.2. The Problems of Government Positioning in the Current Ecological Environment Litigation**

First, the government and its departments that are most aware of the context of the ecological environment damage cases have limited prosecution rights.

Second, whether there is a sequence in the "representativeness of national public welfare" and the application order of the prosecution of the government, procuratorial organs and ENGOs needs further explanation of the theory and system.

Third, in the environmental civil public interest litigation, the Environmental Restoration Compensation and other costs directly flow to the government special account. The government becomes the theoretical beneficiary of the litigation, but does not bear the litigation cost, and its rights, responsibilities and interests do not match. Fourth, under the current institutional arrangement, it is difficult for the government to effectively supervise and manage the ecological restoration program in public interest litigation.

## **4. Reform Approach: The New Arrangement of The Government's Litigation Status in the Case of Ecological Environment**

### **4.1. Clarify the Difference between Environmental Civil Public Interest Litigation and Ecological Environmental Damage Compensation Litigation**

First of all, both kinds of environmental litigation are only civil tort litigation. The causes of the two kinds of litigation are the civil infringement of the environmental rights of the state, the government and the society.

Secondly, the government is the best representative of "environmental public welfare". Article 9 and Article 10 of the constitution of the people's Republic of China stipulate that China's land use, as well as natural resources such as mineral resources, water flow, forests, mountains, grasslands, wasteland, beaches, etc., shall be owned by the state and the whole people, except as otherwise provided by law. The central government has the right to own, use, benefit and dispose the natural and ecological environment resources such as land use, mineral resources, water flow and forest. The ownership of the state property is direct. In this sense, local governments at all levels are the best representatives of regional "ecological environment public welfare", and the central government is the best representative of "ecological environment public welfare" nationwide.

### **4.2. Integrate Environmental Civil Public Interest Litigation and Ecological Environmental Damage Compensation Litigation**

First, the two lawsuits coexist, but we need to smooth the public interest litigation function of the government and the procuratorial organ, and improve the procuratorial supervision mechanism of the procuratorial organ for the compensation litigation of the government's ecological environment damage.

Second, we should merge two lawsuits into one lawsuit, cancel the system of compensation for ecological environment damage, and retain the system of environmental civil public interest litigation. We should give the government and its departments the qualification to be the plaintiffs of environmental civil public interest litigation, and build a litigation mechanism of environmental civil public interest litigation that "government litigation is the main, environmental public interest organizations litigation is the auxiliary".

#### **4.3. Give the Government the Qualification to be the Plaintiff of Environmental Civil Public Interest Litigation**

Step 1, the government needs to establish a mechanism and corresponding team to deal with environmental civil public interest litigation.

Step 2, county level governments and departments need more explicit legislative authorization to become plaintiffs of ecological environment litigation.

Step 3, the procuratorial organ shall be stripped of its power to sue for ecological and environmental public welfare, and let the government become the leader of environmental public interest litigation. Give the procuratorial organ and the government the necessary adjustment time for the function handover of the ecological environment public interest litigation.

### **5. Conclusion**

The Chinese government plays multiple roles in the litigation of ecological environment, but the current position is not accurate. The two kinds of litigation, which are similar in nature and indistinguishable, are the important reasons for the inaccurate positioning of the government.

The author advocates abandoning the current prosecution mode of "mainly procuratorial organs, supplemented by ENGOs". The author proposes to build a lawsuit mechanism of ecological environment damage, which is "government oriented, ENGOs supplemented".

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