

The Dilemma and Way out of Civil Public Interest Litigation Start-Up

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Abstract: The effective operation of civil public interest litigation depends on the joint efforts of many systems. Among them, the system of the subject of suit prosecution and the system of the subject of prosecution constitute the basic driving mechanism. China's legislation on the scope of appropriate prosecution subject is too narrow, in order to protect the possibility of sufficient momentum of civil public interest litigation from the source, we should form a consumer organization, procuratorial organs, individual sanclevel prosecution subject pattern through the amendment of legislation. The order system of the subject of prosecution is the guarantee system of determining the optimal prosecution subject and improving the efficiency of litigation under the premise of the diversity of the prosecution subject. According to the principle of "the standard of structural equilibrium of the two buildings and the economic standard of litigation as the auxiliary", it is more appropriate to construct the order system of "consumer organization-prosecution - the prosecution authorities - individual". As an auxiliary driving mechanism, the incentive mechanism is an important system to ensure that the prosecution subject's intention to sue is transformed into the action of prosecution and actively pursue the result of winning the case. Civil public interest litigation includes at least two specific types of inaction and punitive damages, and the incentive system should be constructed according to the characteristics of both.

1. Introduction

At present, the system of public interest litigation initiated by the procuratorial organs has entered the stage of normalization, and the promotion mechanism applicable to the pilot work can no longer meet the actual demand. It is the focus of the concern and research of the procuratorial organ and the relevant staff to strengthen the study of the basic problems of the public interest litigation system of the procuratorial organs, grasp the supply of the system and improve it. As for what public interest litigation is, no consensus has been reached within and between the practical and theoretical communities. The procuratorial organs are mainly promoted by practical departments for public interest litigation, and most of them advocate civil public prosecution (or civil prosecution). In the theoretical field, scholars of litigation law conduct independent research from two aspects of administrative public interest litigation and civil public interest litigation, respectively, and give the definition of civil public interest litigation or administrative public interest litigation. However, some commentators have defined a more complete definition of public interest litigation, but in specific discussions, they often only discuss civil public interest litigation or administrative public interest litigation. The following is the author's understanding of the basic problems of the public interest litigation system of the procuratorial organs, which is intended to throw bricks and lead jade [1]. Figure 1 is a civil public interest litigation process.

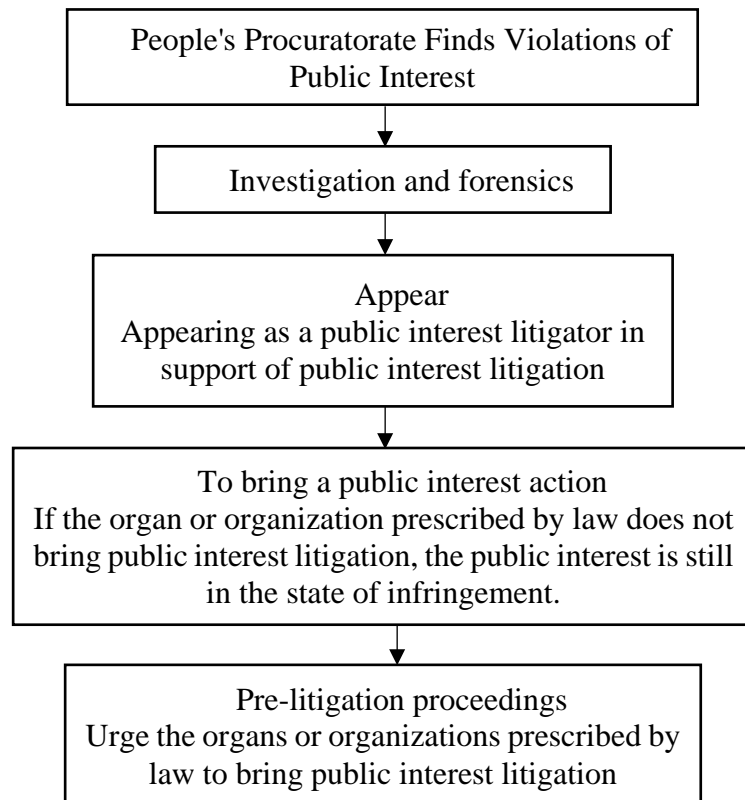


Fig.1 Civil Public Interest Litigation Process

2. The Operating Mechanism and System Composition of the Civil Public Interest Litigation Mechanism:

From the existing research results, the academic community basically agreed on the following two contents: : the scope of the subject of appropriate prosecution is too narrow, from the source to limit the possibility of civil public interest litigation to be brought; Simply expanding the scope of the subject of suit-rate prosecution does not guarantee its enthusiasm for filing civil public interest litigation for fee-cutting, so the corresponding incentive mechanism is, especially necessary. Although the above-mentioned research touches the essence of the question from different angles, the individual perfection of any one system will not help to solve the difficult dilemma of civil public interest litigation. The thought-based mechanism of civil public interest litigation should be a system that can integrate, the two independent systems, in which, the specific systems are positioned accurately and cooperate with each other, so as to fundamentally guarantee the operation of civil public interest litigation into a normal track [2].

(1) The operating mechanism of the driving mechanism of civil public interest litigation

Traditional litigation adheres to the principle of “direct interest”, and the subject of civil public interest litigation often does not have a direct interest in the litigation it brings. Therefore, how to reasonably expand, the scope of the appropriate subject of civil public interest litigation is the source of the mechanism of civil public interest litigation. In the case of good civil public interest litigation, it can be expected that the number of cases will increase substantially, and even a number of suitable prosecution subjects will be competing for prosecution on the same matter [3]. Under such circumstances, it is of great significance to construct a scientific and reasonable system of the main body order of prosecution, to ensure that the optimal prosecution subject is prosecuted first. The above two systems jointly guarantee the sufficient motivation of civil public interest litigation from the source, and play the role of the basic driving mechanism. Civil public interest litigation is usually complicated, the subject matter of the lawsuit is huge, and the litigation costs are relatively high. Because of the above particularity, the subject of the prosecution is usually unwilling and afraid to bring a lawsuit. Only through incentive mechanism to stimulate it, can we arouse the enthusiasm of

the prosecution subject to protect the public interest through litigation, and make their willingness to sue into prosecution behavior [4]. This is also an indispensable reason for the incentive mechanism of the prosecution subject as an auxiliary driven mechanism. From the perspective of the special nature of civil public interest litigation itself and the two creations, the operating mechanism of its driving mechanism is as follows: "From the special nature of civil public interest litigation, the subject of suit prosecution through litigation to maintain public interest is a new form of the state fulfilling its own obligations. Although the administrative means have the advantages of timely and efficient, but from the actual situation, relying only on administrative force to protect the common interests of the effect is really limited. For a long time, China has relied heavily on administrative regulation to rectify the consumption disorder, but administrative regulation has shown inefficiency, ineffectiveness, incoherence and undemocratic problems in more and more areas, including the field of consumption. This seriously affects the effect of administrative regulation. In this context, the concept of justice as an auxiliary regulatory tool has gradually been recognized [5]." The State has placed more and more social public affairs to be completed by public organizations, in fact, the State has partly entrusted the responsibility for safeguarding the public interest to social organizations and individuals, and even then, the state has the right to do so for the organization of the society and the provision of a person who can provide a common benefit to the community. When the consumer public good is or is likely to be destroyed, the State is obliged to take certain measures to prevent and control it. Consumer civil public interest litigation defends the public interest of the non-specific majority, so, when the prosecution subject with no direct interest, especially the private subject, the cost that would have to be borne by the state is being transferred to society. Correspondingly, the state should take certain measures to ensure that the appropriate subjects to protect the channels of consumer public welfare, and fully mobilize its enthusiasm for maintaining the public welfare of consumption [6].

From the point of view of the particularity of the subject of prosecution, the expansion of the scope of the subject of suit prosecution is first faced with the problem of limitation. The main body of consumer civil public interest litigation is "no direct interest related person" if the lack of set of incentive machine system, it is very difficult to protect the main body to raise the passion of litigation to protect the consumer public welfare. Rational economic calculation is an issue that the subject of prosecution is bound to consider, and no one is willing to pay more to protect the consumer public welfare issues that have nothing to do with them. Consumer civil public interest litigation involves a wide range of investigation and evidence-gathering professionalism, time-consuming and long-term, the required litigation is bound to be much higher than the general consumer private interest litigation, especially if lost, the possible consequences are far from the general prosecution subject can bear [7]. If there is no other system for the sharing, of litigation costs and litigation risks, the prosecution subject after winning the case can not receive any reward, then its enthusiasm to prosecute will inevitably be greatly reduced. It is often large enterprises that do harm to the consumer public good, which are often local tax payers, and make a huge contribution to the growth of local GDP. In the current global economic recovery is weak, some places to maintain growth pressure is more realistic situation, some places on the local star enterprises to infringe on the consumption of public welfare behavior is mostly deliberately ignored or even disguised indulgence, resulting in these enterprises have no fear, more contempt for the quality, of production products and services, This situation often leads to more serious consumer public welfare violations. Shijiazhuang Sanlu Group Co., Ltd. in the problem milk powder incident, Changchun Changsheng Biotech Co., Ltd. in the problem vaccine incident are typical. Therefore, consumer civil public interest litigation is faced with a powerful enterprise, the vast majority of the prosecution subject relative to the defendant, human, financial, material and other aspects of the strength are very different. Although the legal system of a country has its own causes of formation, artificial facilitation is inevitable, and as the subjective factors of the people involved, it will inevitably carry a certain one-sidedness and imperfection. And when many conflicts of interest are involved, the law cannot completely take into account both the choice of interests, but when people choose one kind of interest to protect, the other kind of damage is inevitable. When the law faces such a dilemma, public interest litigation has become one of the means

to make up for the shortcomings. For example, in civil lawsuits, people often follow the principle of “ignoring complaints”, but when a certain kind of non-compliance really divides the interests of the public, this kind of “unbearable” “public interest litigation” seeks for the law A balance point. Furthermore, the power of state organs and civil servants is limited, and the tentacles of the law cannot reach every corner of society. The introduction of “private prosecutors” by public interest litigants in the “vacuum zone” where the law appears to be powerless is no doubt It is a powerful supplement to China's national law enforcement agencies, which is necessary today to build a social legal system for all people. In this realistic situation, on the basis of reasonable expansion of the scope of the appropriate subject, through the arrangement of reasonable order system, find out the most suitable prosecution subject priority prosecution, and through the incentive mechanism to minimize the litigation burden of the appropriate prosecution subject or even get the reward, and thus eliminate the prosecution subject's worries about the prosecution. It is an important way to ensure the vigorous development of consumer civil public interest litigation [8].

3. Improvement of the Basic Mechanism:

Further expansion of the scope of consumer organization-type prosecution subjects. By comparing ‘ the provisions of ‘ Articles 36 and 47 of the Consumer Rights Protection Act, it can be found that consumer, associations and other consumer organizations below the provincial level are excluded from the scope of consumer civil public interest litigation. In this regard, the National People's Congress Law and Industry Commission inside an internal “consumer civil public interest litigation research opinions” report on the relevant content or can directly reflect the reasons: :” conducive to the prevention of abuse; Conforms to the actual situation of Chinese consumer organizations; Is conducive to the consumption of civil public welfare litigation can be enforced; And the current department of law and the degree of political assistance. The author of the, above-mentioned reasons needs to be re-examined for the reasonableness of the above-mentioned reasons, as the author believes that the actual situation of the public interest litigation has been applied for more than five years and the implementation of environmental public interest litigation [9].

4. Granted to the Subject of Individual Suitability to the Prosecution.

Citizens as individuals are the direct beneficiaries of a good consumer environment and the direct victims of a bad consumer environment. The market regulatorist authorities, in the limited nature of their own power, cannot make scientific predictions about all upcoming consumer public welfare damage, and cannot effectively monitor the quality and business practices of all products, or deal with all acts of harm to consumer benefits that have occurred in a timely manner. In addition, considering that the direct, victims bear, the brunt of the infringement of the consumer public welfare, but individuals who are natural persons are more empathized than social organizations and prosecution authorities, the force of this natural formation of litigation is undoubtedly far greater in intensity than the latter two. Therefore, it has more incomparable nativeity, therefore, to give citizens personal consumption of civil public interest litigation subject qualification is legitimate and reasonable.

From a higher level, the essence of public interest litigation is to bring the unfair ness existing in, the economic, environmental and social life to the court in the form of litigation, to exercise judicial power by, the court, to conduct judicial review and intervention in the business conduct of enterprises, and to force them to change the unfair system by legal means. As the subject of appropriate prosecution of public interest litigation, the individual, is of great significance to further realize people's democracy and perfect the judicial system to protect the public welfare and supervise the administration. Therefore, it is especially necessary to give citizens the corresponding legal weapons, especially the qualification of the subject of prosecution [10].

5. Conclusions

The localization of the judicial system refers to the fact that the judicial organs are actually

governed by local authorities in the system of power affiliation. Under this system, local courts at all levels established under administrative divisions are actually, local courts at all levels, and the grass-roots people's courts are courts of district and county power bodies, and intermediate courts are local. The court of the municipal authority, the high court of law becomes the local court of the provincial, municipal, and autonomous district authority. Because people, money, things and so on are subject to local power, local courts at all levels cannot be independent of the local government, and will inevitably be subject to local governments at all levels. The judicial system has no independence for local governments. As a result, once the interests of local governments are involved, the judiciary will not be able to accept the decision in a timely manner, conduct a fair trial, ^公 adjudicate and resolutely enforce the decision in accordance with the requirements of the law. The end result is that the rule of law cannot be enforced everywhere. A government governed by the rule of law can only be an air shock. Judging from the numerous incidents that have occurred in the past against the public interest, most of them are the result of government failure. It is precisely because of the association and affiliation of administrative power and judicial power at the local level that the judiciary is difficult to act in safeguarding the public interest. Driven by interests, local governments can easily take the so-called concern, for the overall situation of the whole place as a pretext, so that the judicial machinery must not be taken into law, or even become the defenders of the chain of interests. Therefore, in order for the judiciary to do its part, in safeguarding the public interest, and to truly play the function of public interest litigation, it is necessary to further promote the reform of the judicial system. Change the existing system of localization of the judiciary, achieve the relative independence of the judicial system, at least at the local level to form a judicial system that is out of the control of local power.

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