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硕 士 学 位 论 文

检察机关提起环境民事公益诉讼初探

Study on the Prosecution Filed Environmental Public Interest Litigation

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中 文 摘 要

随着我国市场经济的不断发展，国家利益和社会公共利益受损害的现象日益严重，我国现行的法律和诉讼制度已经不能很好地进行规制和解决，迫切需要建立一种新型的诉讼机制即公益诉讼制度。研究建立检察机关提起公益诉讼制度，成为近年理论界与实务界关注的一个重要课题。

法律制度是社会经济生活的必然反映，经济的发展带来了更为复杂的社会问题，特别是环境污染等公害问题。我国改革开放以来环境保护事业取得了巨大进步，但是有关环境公益诉讼制度的规定仍然缺失，环境公益得不到有力的保护。现代西方国家普遍建立了检察机关提起的公益诉讼制度。我国检察机关在现有法律缺乏具体规定的情况下，积极探索代表公益提起环境民事诉讼，这一做法遭到了质疑。对公益诉讼制度进行探索和研究，有助于该制度的进一步建立和完善。

本文力图通过历史考察的方法，对公益诉讼制度的起源与发展进行分析，并阐述检察机关提起环境民事公益诉讼的理论和实践依据，认为我国实行检察机关提起环境民事公益诉讼制度是必要的，也是可行的。在此基础上，提出构建检察机关提起环境民事公益诉讼制度的初步设想。

全文除前言和结束语外，分为四章。

第一章阐述了与环境民事公益诉讼相关的基本概念和特征，介绍了公益诉讼产生的历史渊源和现代发展，以及我国环境民事公益诉讼的现状及发展。起源于古罗马的公益诉讼被美国、法国等资本主义国家吸收和借鉴，此后不断发展和完善。我国在改革开放以后制定了一系列的环境保护立法，但是对于公益诉讼制度的规定仍然缺乏，使得一些破坏环境公益的行为被排除在司法救济之外，导致对环境公益的保护不力。本章还阐述了我国环境公益诉讼的进展情况。

第二章考察了域外国家公益诉讼制度，以美国、法国和印度为考察对象。现代意义上的环境公益诉讼始于美国，无论是环境判例，还是环境公益诉讼立法，美国都是最为发达的。作为大陆法系国家代表的法国，公益诉讼主要包括检察机关提起的公益诉讼和越权之诉两种形式。印度的公益诉讼制度虽然起步较晚，但

发展很快，在诉讼主体资格的认定、管辖权以及司法救济等方面都有自己的特色。

第三章阐述了我国检察机关提起环境民事公益诉讼的理论依据以及实践基础。环境公共信托理论、检察权理论、处分权理论为检察机关提起环境民事公益诉讼提供了坚实的理论基础。近年来检察机关或者其他组织提起的环境公益诉讼案例，从实践的角度证明了检察机关提起环境民事公益诉讼是可行的。

第四章提出了建立检察机关提起环境民事公益诉讼制度的初步构想。建立检察机关提起环境民事公益诉讼制度是维护环境公益、建设资源节约型、资源友好型社会等的必然要求。司法实践中的成功探索以及诉权理论的发展，证明该制度是可行的。我国应当确立公益、提前通知、有限救济、不适用调解等原则，作为环境公益诉讼制度的指导原则；扩大直接利害关系理论解释，确认检察机关的原告资格；检察机关在诉讼中的法律地位属于特殊的原告；本文还对检察机关的调查权、举证责任、诉讼费用的负担、诉讼后果的承担等问题作了解答。

关 键 词：公益诉讼；检察机关；环境法

ABSTRACT

With the continuous development of market economy in China, the damage phenomenon of national interest and social welfare yet is getting more and more serious. China's current laws and legislative systems have been unable to properly regulate the system. Therefore, our country urgently needs to establish a new legal system. That is, the public interest litigation system to maintain public interest. Whether it should be established by the prosecution to bring about public interest litigation on behalf of public interest and how to build the system have become important issue concerned for theorists and practitioners in recent years.

The legal system is bound to be reflected by the socio-economic life. Economic d envelopment has caused more complex social problems, especially the environment pollution hazards. Fortunately, environmental protection has made great progress since China's reform and opening up, however, such an environmental public interest litigation system of the sort requires is still missing. Environmental public interest doesn’t gain effective protection. In the light of the lack of the specific conditions, public interest of environmental civil action should find out the existing problems, which is being challenged, positively exploring and researching on public interest litigation of these issues will be helpful to further construction and perfection.

This paper seeks to examine the history of litigation system, based on the origin and development of public interest litigation system, analysis and describes the theory and practice of the prosecution filed environmental public interest litigation system in our country. It is necessary and feasible to carry out public interest litigation system. On this basis, the author puts forward to originally envisaging for the procurator ate environmental public litigation system.

The paper is divided into four chapters, except for forward and conclusion.

The first chapter identifies the related to the basic concepts and characteristics of environmental public interest litigation, and introduces public interest litigation about the historical origin and modern development, including potential and problems of environmental public interest litigation, which was originated in ancient Rome .There are many countries such as the United States, France and other capitalist countries

absorbing and learning experience from the environmental public interest litigation . The litigation has been continuously developed and refined. In the past five years, along with reform and opening up in China, we have formulated a series of policies and regulations on environmental protection, but the requirement for public interest litigation system is still lacking. So judicial protection is still unable to stop the damage to the environment from the public interest. On the contrary, it may lead to the inadequate or incomplete environmental protection. This chapter also describes the development profiles of China's environmental public interest litigation.

Chapter II examines the countries outside China on public interest environmental litigations. Here, we take the United States, France and India for example as the study object. Environmental public interest litigation originally filed by the United States. Whether the environmental case or legislation of environmental public interest litigation, the United States is the most developed. The French, as a representative of h one of civil law countries, its public interest litigation is mainly including prosecutors filed the environment of civil public interest litigation and the ultra vires of the two forms. In India, public interest litigation system is okay to be late, but rapidly develop. And in India’s country, it has own special features in the qualification of the subject of proceedings, jurisdiction and the judicial relief etc.

Chapter III Expounds prosecutors filed the environment of civil public interest litigation of theory and practice basis. The theory consists of environmental public trust theory, procuratorial power theory, and disposition theory. The theory provides a solid basis for the system. In recent years, prosecutors or other organizations have filed the environment of civil public interest litigation, from practical view, it seems feasible.

Chapter IV, The theory personal perspectives propose the initial idea of the establishment of the prosecution filed environmental public interest litigation system. As a matter of fact, it is inevitable and necessary for the procuratorate to file environmental public interest litigation so as to maintain environmental public interest, build a resource-efficient and environment-friendly society, which is mostly determined by construction of the system, the prosecution filed environmental public interest litigation. With this successful exploration of involving the judicial system in practice and the development of appeal right system, environmental public interest litigation system be proved the feasibility. Our country should establish the issues

such as community principles, advance notice, limited relief, the mediation of not applied rules and so on, as our guidelines for environmental public interest litigation system. What's more, it expand direct interest in theory and confirm the prosecution of plaintiffs; prosecution's legal status at law belongs to particular plaintiff; The article also answer powers of the prosecution of investigatory powers, the burden of proof, the burden of litigation costs, bear the consequences of such issues .

Key words： Public interest litigation;Prosecution;Environmental Law.

目　录

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前　言

近年来，公益诉讼作为一种社会现象和法律现象已经引起了社会的广泛关注。1996 年，被称为“中国公益诉讼创始人”的福建龙岩消费者邱建东因为一公用电话亭未执行邮电部夜间、节假日长话收费半价的规定，多收了他 0.6 元钱而把邮电局告上了法庭，结果虽因邮电局积极配合整改等原因撤诉，但启蒙了公众“公益诉讼”的意识。1998 年，郑州市民葛锐在火车站被收取 0.3 元钱的如厕费而与郑州铁路局对簿公堂。河北律师乔占祥因火车站擅自涨价多收了他 9 元钱状告铁道部。2004 年，正在中国人民大学就读的法学博士生宋德新，以“高速公路不高速”为由，状告河南省高速公路发展有限责任公司等等，[①]虽然这些案件的诉讼标的都很小，而且大多以败诉告终，但却引起了社会的广泛关注。究其原因，这类案件都带有“公益”的性质，案件所产生的社会和法律意义已经远远超过了输赢本身。除了公民提起的公益诉讼外，我国检察机关也积极探索通过建立公益诉讼制度来维护国家和社会公共利益，并在司法实践中取得了一定的成效。随着环境污染的恶化和环境问题的日益突出，国内一些学者、全国人大代表和全国政协委员先后多次呼吁在我国尽快建立环境公益诉讼制度，以维护环境公益。

公益诉讼起源于罗马法，是相对私益诉讼而言的。私益诉讼是指为了保护个人所有的权利的诉讼，仅特定人士才可以提起，公益诉讼是为了保护社会公利益的诉讼，除法律有特别规定外，凡市民均可提起。[②]和私益诉讼相比，公益诉讼的目的是维护国家和社会公共利益。

根据我国传统的诉权理论，只有与案件有直接利害关系的人才有权提起诉讼。如果违法行为未直接侵害特定公民、法人或者其他组织的合法权益，而只侵害了国家和社会公共利益，由于公民、法人或者其他组织的合法权益未受到侵害，不能享有诉权，而作为代表国家和社会公共利益享有权利的主体比较抽象，往往没有合适的主体对这类违法行为提起诉讼，侵害国家和社会公共利益的违法行为

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