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环境公益诉讼原告资格的双重救济途径：
扩张与限制

Double Relief Way of Environmental public welfare lawsuit
Plaintiff Qualification: Expansion and Restriction

倪斌鹭

指导教师姓名：薛夷风助理教授

专业名称：法律硕士

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摘要

2015年,注定是公益诉讼之年。一是2015年1月,新环保法实施;二是当月《最高人民法院关于审理环境民事公益诉讼案件适用法律若干问题的解释》出台;三是当年七月全国人大常委会授权最高人民检察院在部分地区开展公益诉讼试点工作;四是法院受理环境公益诉讼的个案,较往年的数量有大幅提升。然而2015年,有20个省、直辖市处于盲区,无法实现公益诉讼案零的突破,这些区域已超过全国区域半数,约占了全国34个省级行政区中的百分之五十九。究其实,其原告资格困境重重。由于传统诉讼法律对于原告的资格有着适格的要求,即只有与受损害的利益有“直接利害关系”的当事人方可具备原告主体的正当性。这样,环境公益诉讼的原告资格受到严重的限制。因而,必须借鉴国际国内经验对其进行突破,迫切要求放宽即扩大公众的原告资格,并在其基础上加以必要的限制。

本文分为七章即七个部分,来阐述本文的观点。

第一部分为环境公益诉讼理论及司法实践概况。

第二部分环境公益诉讼原告资格的基本原理及争议,阐述了涵义特征以及三大理论,提出实践中各类争议。

第三部分为他山之石;第四部分为我国原告资格制度立法和实践的困境,指出我国现行立法的相关规定及原告资格制度四方面不足之处。

第五部分为救济途径一:对原告主体资格的扩张,实行原告主体资格多元启动扩张途径,包括环境行政机关、检察机关、社会组织、公民以及后代人。

第六部分为救济途径二:对原告起诉资格之限制,细述了对五种原告资格的各种冲突的限制,并实施对公民起诉权及检察机关起诉权的行使的限制。

第七部分为环境公益诉讼的原告资格的立法程序保障,通过修改相关法律规范利害关系人,还要防止滥诉、设诉前程序并实行激励机制。

关键词: 公益诉讼; 原告资格; 扩张限制

ABSTRACT

In 2015, is doomed to be public welfare lawsuit. It is in January 2015, the new environmental law implementation; The second is the month the supreme people's court on civil environmental public welfare lawsuit cases explain some issues of applicable law on; Three is in July of the standing committee of the National People's Congress authorized the supreme people's procuratorate in some areas to carry out the public welfare lawsuit trial work; Four is the court accepts the environment public welfare lawsuit case, the usual number has increased substantially. In 2015, however, there are 20 provinces, municipalities directly under the central government in the blind spot, unable to realize the public welfare lawsuit zero breakthrough, these areas have been more than half of the national area, accounts for about fifty-nine percent of the country's 34 provincial administrative region. At bottom, the qualification of the plaintiff woes. Due to the traditional litigation law has the eligibility requirements for the plaintiff's qualification, namely only with the interests of the damage have "direct stakes in" the legitimacy of the parties may have the plaintiff main body. In this way, the environmental public welfare lawsuit plaintiff qualification is limited by serious. Therefore, must draw lessons from the domestic and international experience on the breakthrough, pressing for relaxing to expand the plaintiff qualification of the public, and based on the necessary restrictions.

This article is divided into seven chapters seven parts, to illustrate this point of view.

The first part for the environment public welfare lawsuit theory and judicial practice.

The second part is the basic principle of environmental public welfare lawsuit plaintiff qualification and controversy, this paper expounds the connotation characteristics and three theory, puts forward all kinds of disputes in practice.

The third part for his shan zhishi: outside environmental public welfare lawsuit the comparison of the eligibility of the plaintiff, examine draw inspiration to our country.

The fourth part is the plight of the plaintiff qualification system legislation and practice in our country, points out that the current legislation in China and the relevant provisions of the plaintiff qualification system four aspects to be desired.

The fifth part for relief way: the expansion of the qualification of the plaintiff, the plaintiff's subject qualification multiple start expansion path, including the environmental administrative organs, procuratorial organs, social organizations and citizens and future generations.

The sixth divided into relief way 2: the qualification of the plaintiff sues the limit, to the five kinds of the limitation of the plaintiff qualification of the conflicts, and implementation of citizens' right of prosecution and the restriction of procuratorial organs prosecution right.

The seventh part is the environmental public welfare lawsuit plaintiff qualification of legislation guarantee, by modifying the relevant legal norms stakeholders, prevent rampant litigation, appeal to the former procedure and implement incentive mechanism.

Keywords: public welfare lawsuit; the plaintiff qualification; Expansion limit

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引 言

我国经济在不断上行，工业化程度也逐步提高，对环境和资源的无节制开发利用现象十分严重，由此导致的环境污染问题也日益严峻。由于环境问题的公共利益特性，隐藏着社会风险巨大，近年来，我国陆续出台了《森林法》、《环保法》《大气污染防治法》等十余部实体法对环境进行保护，但各种重大环境污染事件仍然频发，如 2005 年松花江重大水污染、2007 年太湖蓝藻危机、2011 年渤海湾溢油事故及 2013 年初持续影响全国 17 个省市 6 亿人口的大范围雾霾天气等。这一个个重大污染事件，除了反映污染企业的道德沦丧、环保部门的监管缺位外，更凸显了我国在环境保护司法制度方面的严重缺失，于是公益诉讼制度逐渐走进公众的视野，并被立法机构所重视。

适格的原告是环境公益诉讼的前提,亦引起社会各方广泛争执,且应当提上议事日程的关键问题。我国诉讼法已有规定,只有直接利害关系主体,才能作为原告。然而该“直接利害关系说”不能解决公共利益遭受侵犯的损失。近年来,虽在立法上有所放宽,但是规定都过于简单,适用性不强。

环境利益属于扩散性利益,更多地表现为公共利益。作为社会公共利益的环境纠纷,当事人之间很难固定简单。私人利益纠纷受侵犯可以通过诉讼进行法律保护,毁灭性的公共侵权却要面对传统主体资格理论很难获得正义。在我国具体的司法实践中,近年来由于原告资格限制而无法受理或被驳回的环境案件层出不穷。所以,应突破传统的直接利害关系当事人理论限制,重塑原告资格制度,赋予多元主体诉讼权利,维护社会公共环境利益,使其成为法律保护公共环境的利器。为此,本文结合目前我国的司法实践,对环境公益诉讼的适格主体的范围进行分析,并对其扩张和限制提出自己见解。

第一章 环境公益诉讼理论及司法实践概况

第一节 环境公益诉讼理论概述

一、理论困惑

一直以来,私益诉讼与公益诉讼是民事诉讼的两大重要组成部分。后者来自于罗马法,它是相对于私人利益诉讼,以保护公共利益之诉讼为目标。我国传统的民事诉讼理论将民事诉讼界定为针对诉讼主体间私人权益产生纠纷而引发的诉讼程序,致力于保护各主体的私益和调整私益间的冲突,并以此为基础构建了整个民事诉讼体系。该理论适用“直接利害关系说”的判断方式,直接的利害关系必须存在于诉讼主体与诉讼标的之间,诉讼主体因权利被侵害而享有特定的起诉权,属于原告“垄断”或“独家”的权利。

而根据宪法的相关规定,我国实行社会主义公有制,这就意味着没有任何人拥有环境公共资源专属权,加上环境侵害具有广泛性、持久性及不特定性等特征,大多是侵害不特定的环境利益,难以确定直接利害关系人,其中也可能包括间接利害关系人。若根据传统的民事诉讼法理论,并没有适格的原告,导致了环境公益受到损害时无法通过民事诉讼手段得到救济。

为了纠正这种“有权利而无救济”现象,2012年8月3日,全国人民代表大会常务委员会《关于修改〈中华人民共和国民事诉讼法〉的决定》(以下称“新民事诉讼法”)中第一次确立了环境公益诉讼制度。该法第五十五条规定:对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为,法律规定的机关和有关组织可以向人民法院提起诉讼。此后的法律法规,如2015年《民事诉讼法》司法解释、2014年《环境保护法》修订、2015年最高院环境民事公益诉讼司法解释等也对公益诉讼进行了补充。

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