

# Research on Environmental Public Interest Litigation in Taiwan

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**Abstract** Along with various human production or consumption activities, large-scale air pollution, water pollution, noise, land subsidence and other public nuisances that are harmful to human health and the living environment have emerged. With the emergence and rise of environmental awareness among the people of Taiwan, in the face of the increasingly deteriorating environment, Taiwan has taken a series of measures. First of all, Article 9 of the *Administrative Litigation Law* first stipulates public interest litigation; then, Article 34 of the *Basic Law on the Environment* clearly stipulates the important documents for public interest litigation. In this paper, it is held that environmental maintenance and improvement is the responsibility of every citizen, not just that of the government. On the path of environmental public interest litigation, every citizen should have the right mindset and response strategies.

**Key words** Public interest litigation; Citizen litigation; Administrative litigation; Environmental litigation; Basic law on the environment

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In the process of devoting itself to economic growth in the past, Taiwan seriously neglected the environmental issues that are most relevant to people's lives. In recent years, an increasing number of environmental protection groups have emerged, begun to devote themselves to environmental protection and carry out environmental protection-related campaigns, and have made new progress in formulating environmental regulations. The introduction of environmental citizen litigation has enabled the people and public welfare organizations to have a direct weapon against administrative agencies. Previously, administrative agencies held a large amount of resources, and for their illegal or unreasonable behaviors, the people had few channels or resources to appeal or utilize. Both the environmental regulations of the United States and Germany have systems of citizen litigation, which are both based on the premise of public interest. However, in Germany, filing a lawsuit cannot be done by an individual, and it must be done through group litigation. Many citizen lawsuits in Taiwan are modeled after the concepts of environmental regulations in the United States. Nowadays, individuals or groups can strive for better environmental quality for the general public.

Environmental public interest litigation in the United States is divided into two major categories: one is to sue all pollution sources, including private enterprises, on the grounds that they have violated the legal obligation of pollution prevention and control; the other is to prosecute the environmental protection director on the grounds of failing to fulfill his legal obligations. The introduction of relevant regulations of the public interest litigation system by Taiwan from the United States have been affected by the

earlier Article 9 of the *Administrative Litigation Act* revised based on the Japanese regulations. It is limited to filing lawsuits against environmental protection authorities on the grounds of failure to fulfill legal obligations. If it encounters government officials who prioritize economic development and business conglomerates that prioritize corporate profits, its effectiveness will be greatly reduced. However, the purpose of environmental public interest litigation is to urge the government to actively take certain legal actions to promote or protect public interests against pollution sources, and it does not require the infringement of rights guaranteed by law as a condition.

Taiwan's environmental public interest litigation system grants the public the right to file a lawsuit with the court to expose enterprises for violating legal environmental protection obligations or to urge the competent authorities to enforce the law actively. On the one hand, the legislative intention is to remind enterprises not to take chances or the competent authorities not to be complacent through the pressure of such lawsuits. On the other hand, it is to provide the public with a channel for resistance within the system, so as to prevent them from taking to the streets to protest at every turn when they have no way to express their demands. Taiwan's various environmental protection laws, like those in other countries, are almost all introduced from the United States, and the public interest litigation system is no exception.

## 1 Law stipulates

Firstly, the *Administrative Litigation Act* revised and passed by Taiwan in 1998 added Article 9, which stipulates that for the purpose of safeguarding public interests, the people may file administrative lawsuits against the illegal acts of administrative authorities on matters that are not related to their own rights and le-

gal interests, but only where there are special provisions in the law. Article 9 of the *Administrative Litigation Law* is based on the legislative source of citizen litigation in Japan. However, as mentioned above, Japan mainly uses the litigation procedure to maintain the "objective legal order" and "protect public interests", and there is no mechanism for citizen litigation in the aspect of environmental law. The practical application of environmental public interest litigation in Taiwan follows the system of environmental law in the United States, with a focus on environmental protection. The public interest litigation system was officially introduced by Article 81 of the *Air Pollution Control Act*, which was revised and promulgated on January 20, 1999. Subsequently, it was extended to Article 72 of the *Waste Disposal Act*, Article 72 of the *Water Pollution Control Act*, Article 49 of the *Soil and Groundwater Pollution Remediation Act*, Article 59 of the *Marine Pollution Control Act*, and Items 8, 9, and 10 of Article 23 of the *Environmental Impact Assessment Act*. The above-mentioned provisions are the "special provisions of law" as referred to in Article 9 of the *Administrative Litigation Law*.

## 2 Important documents of litigation

**2.1 Plaintiff's eligibility** Both the victimized people and public interest organizations can be plaintiffs in a lawsuit, but the law does not stipulate that "public interest" must be the prerequisite. In fact, the provisions of Article 505 (g) of the Clean Air Act of the United States (the term any person as used in this section means a person whose interests have been seriously affected or are at risk of being seriously affected) should be referred to. A more lenient interpretation should not be made. Due to the different perspectives on personal interests, it is difficult to directly file a lawsuit for a single case. Therefore, the scope of litigation should be narrowed down, and a lawsuit can only be initiated on the premise of public interest.

**2.2 Object of prosecution** According to Article 9 of the *Taiwan Administrative Litigation Act* and Article 34 of the *Environmental Basic Act*, the objects that can be prosecuted are administrative agencies. When administrative agencies violate the law, the victimized people or public welfare organizations may file lawsuits for the purpose of public interest.

**2.3 Other restrictive conditions** The provisions of individual environmental laws are all included in the relevant environmental regulations. For instance, "the victimized people or public welfare organizations may state the specific contents of the negligence in enforcement and notify the competent authority in writing", "If the competent authority fails to enforce the law within 60 days from the date of delivery of the written notice", and "the format of the written notice shall be announced by the central competent authority in consultation with relevant authorities".

**2.4 Other matters** In addition to the above important documents, when the public or non-governmental environmental pro-

tection groups file a citizen lawsuit, they may need to spend a large amount of money. Article 34 of the *Basic Environmental Law of Taiwan* stipulates that when making a judgment, the administrative court may, on its own initiative, order the defendant agency to pay appropriate legal fees, monitoring and appraisal fees or other litigation costs to the plaintiff who has made a specific contribution to maintaining environmental quality. The victimized people or public welfare groups who have filed lawsuits are supported through legislation, so that they can receive compensation after the judgment.

However, due to the fact that the provisions of the existing legal provisions are not yet perfect, especially when filing a lawsuit for environmental issues, one has to pay the lawyer's fees, the litigation fees, and the fees for collecting evidence (such as the fees for environmental investigations and pollution detection) firstly, which is a great burden for both individuals and civil groups. Legislation has granted the people a system to counter administrative agencies, but when implementing this system, the huge litigation costs may deter individuals or civil society groups and reduce their willingness to sue for the public interest of protecting the environment. This is indeed a part of the system that should be reviewed.

## 3 Analysis of important documents

Environmental public interest litigation, also known as public interest litigation related to environmental protection, refers to the lawsuit that the law allows other legal persons, natural persons or social organizations to file with the people's court to safeguard public interests when the environmental public interest is infringed upon due to the illegal acts or inaction of natural persons, legal persons or other organizations. Usually, the administrative authorities are the main ones, while in some countries, it can be done against the polluters. Among the representatives, in order to improve the situation of "environmental injustice", advanced environmental legal system countries such as the United States and France have established the so-called "citizen suit" system, allowing all citizens who care about environmental issues, as well as environmental protection public welfare groups, *etc.*, to protect their rights through this channel. This approach can improve the litigation channels for environmental issues, expand the function of courts in eliminating environmental nuisances, and strengthen the protection of people's environmental rights. However, the legislative basis for public interest litigation in Article 9 of the *Administrative Litigation Law* in Taiwan is Japan's "public litigation". As mentioned above, Japan mainly uses litigation procedures to maintain the "objective legal order" and "protect public interests", and there is no mechanism for public interest litigation in the aspect of environmental law. The application of public interest litigation in Taiwan imitates the system of environmental law in the United States, and it is applied to environmental protection. Both the environ-

mental regulations of the United States and Germany have systems of public interest litigation, and are both based on the premise of public interest. However, in Germany, only a "group" can file a lawsuit instead of an individual. Environmental public interest litigation in Taiwan mostly imitates the concept of environmental regulations in the United States, and the victimized people or public interest groups can file a lawsuit.

The content structure of the public interest litigation provisions of the above-mentioned various environmental laws is roughly the same. In this paper, only important documents of environmental public interest litigation in the relevant provisions of the *Environmental Impact Assessment Law* are analyzed and discussed. Firstly, the development entity must violate the *Environmental Impact Assessment Act* or the relevant orders authorized by it. Secondly, the competent authority must be negligent in fulfilling its legal obligations. Thirdly, the victimized people or public interest groups should inform the competent authority in writing of the specific contents of the negligence in enforcement. Fourthly, the competent authority has not performed its duties in accordance with the law for more than 60 days after the written notice has been served. Fifthly, a lawsuit must be directly filed with the administrative court against the competent authority as the defendant.

## 4 Conclusions

The maintenance and improvement of the environment is the responsibility of every citizen, not just that of the government. To effectively improve the environment, everyone should have environmental protection awareness. Of course, the government should also fulfill its duties, strictly enforce various environmental protection laws or formulate appropriate and feasible environmental laws, which can be able to prevent possible environmental issues before they occur, so as to achieve the desired effect. Therefore, the following conclusions are put forward as follows. Firstly, people's lives have improved significantly, but the problem of environmental pollution is becoming increasingly serious, and there is still no effective relief procedure to date. Secondly, government information is still not fully disclosed, and administrative relief must be sought to enable administrative agencies to fully disclose information. Thirdly, the public's advocacy for environmental protection

is on the rise. More and more citizens or groups are willing and have the capacity to voice their grievances and even take action against environmental issues or pollution incidents. Fourthly, street protests are too costly and can easily lead to social instability. Fifthly, with the media's enthusiastic coverage of global warming and environmental issues, courts can no longer remain indifferent. Sixth, the function of environmental public interest litigation cannot be ignored, and the public can make good use of it.

The relationship between economic development and environmental protection is often tense and even accompanied by conflicts. In today's globalized world, this kind of relationship is even more severely tested and challenged. Taiwan's past economic development has achieved remarkable accomplishments, but the price paid to the environment is also obvious to all. How to balance the interests between the two is an arduous task for every government and also the common responsibility of all the people. With the increase in the income of the people in Taiwan, their environmental awareness has gradually risen. To keep up with The Times, Taiwan's environmental legal system has been gradually conducive to the people's advocacy of environmental rights, ensuring a clean and livable environment in recent years. Although its effectiveness remains to be tested, it can also be seen that the next stage of environmental legal system in Taiwan may no longer be achievable by such environmental public interest litigation with limited effect and weak operability. It should be considered to formulate relevant special laws on environmental pollution damage compensation, or even special laws on compulsory environmental pollution insurance systems for various pollution sources.

## References

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