Revision of Environmental Protection Law Stirs Controversy

Qie Jianrong

Abstract

In 2012, the amendments to the Environmental Protection Law (EPL) and the Civil Procedure Law (CPL) attracted great attention. The amended CPL was introduced on January 1, 2013, and for the first time, environmental public interest litigation became enshrined in the law marking the beginning of public interest litigation for environmental protection. In contrast, the revision of the EPL aroused great controversy, even receiving such criticism as being a “regression of decades.” To stop the approval of the draft amendments by the National People’s Congress (NPC), famous Chinese environmental jurists wrote to Wu Bangguo, the Chairman of the Legislative Affairs Committee of the NPC, noting that there were many flaws in the proposed amendments to the EPL, for which the NPC Standing Committee was advised to postpone the bill passing process.

Keywords

amending Environmental Protection Law – amending Civil Procedure Law – environmental public interest litigation enshrined in law

1 Environmental Public Interest Litigation Enshrined in Civil Procedure Law

On August 31, 2012, the twenty-eighth session of the Eleventh National People’s Congress adopted the decision of the NPC Standing Committee on the amendments to the Civil Procedure Law (CPL) (民事诉讼法). The amendments to the CPL took effect on January 1, 2013. According to the newly amended CPL, institutions and certain organizations defined by law can bring litigation to court with regard to violations against public interest such as environmental
pollution and infringement upon consumers’ legitimate rights and interests. This provision of the CPL is an institutional breakthrough for environmental public interest litigation.

In fact, prior to the adoption of the newly amended CPL, environmental organizations—both from civil society and government-backed ones—had tried to initiate environmental public interest litigation. For example in 2009, the All-China Environment Federation (ACEF) (中华环保联合会) under the Ministry of Environmental Protection (MEP) initiated environmental public interest litigation against Jiangsu Jiangyin Port Container Company (江苏江阴港集装箱有限公司) over pollution involving iron ore powder. ACEF filed the same lawsuit in Guizhou and other places. Non-government affiliated environmental organizations, such as the Friends of Nature (自然之友), also initiated the same legal proceedings in the beginning of 2011.

On September 20, 2011, Friends of Nature and the Green Volunteer League of Chongqing (重庆市绿色志愿者联合会) initiated environmental public interest litigation in the Qujing City (曲靖) Intermediate People's Court against the Yunnan Luliang Chemical Industry (云南省陆良化工实业有限公司) and Yunnan Luliang Peace Technology Co. (云南省陆良和平科技有限公司). They sued for compensation for environmental losses (10 million RMB) caused by chromium slag pollution. Environmental jurists and insiders hold that this lawsuit filed by non-governmental environmental organizations was a remarkable start for environmental public interest litigation, for it was initiated by non-stakeholders. This milestone is seen as a truly meaningful practice of environmental public interest litigation.

However, those initiations of environmental public interest litigation were not directly defined by laws or derived from legal provisions. Instead, they were based on some provisions found in policy documents, such as the Decision of the State Council on Implementing the Scientific View of Development and Strengthening Environmental Protection (关于落实科学发展观加强环境保护的决定). For example, it was made clear in the decision that, “The function of civil societies should be fully exerted to encourage the reporting and disclosure of all types of environmental law-breaking activities so as to promote the lodging of lawsuits in the environmental public interest.” Only certain courts can accept environmental public interest litigation. Most organizations, with the exception of the ACEF and Friends of Nature, choose courts with a subsection to hear environmental protection cases.

Environmental public interest litigation has embarked on a ground-breaking journey, but still encounters many obstacles in the law. Amendments to