The Working Mechanism of “Recognition and Compensation” of Procuratorial Environmental Civil Public Interest Litigation - From the Perspective of Civil Public Interest Litigation Cases Incidental to Criminal Environmental Pollution

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Abstract: Exploring the establishment of a working mechanism of "recognition and compensation" in criminal incidental civil public interest litigation is a way to integrate the guidance of procuratorial organs, judicial examination and public supervision, and strive to maximize the protection of public interests. Procuratorial organs in the case facts clear, using mediation, encourage environmental polluters sincerely regret, can save litigation costs, improve case efficiency, promote the enterprise involved actively pay ecological environmental damage, ensure damaged public welfare timely repair, and reasonable enterprise concern, guarantee normal production and operation, punish crime and ecological organic unity, ensure the balance of environmental protection and economic development, to adjust social relations, regulate social relations, standardize social behavior, resolve the purpose of social contradictions of the rule of law.

Keywords: Procuratorial Supervision; Public Interest Litigation; Recognition and Compensation

I. THE BASIC NOTION OF THE WORKING MECHANISM OF "ADJUSTMENT AND COMPENSATION"

(1) Adhere to the notion of representing the public interests

"Clear waters and green mountains are gold and silver mountains” has become a social consensus. A clean and beautiful environment is an important part of the people's better life. The working mechanism of "adjustment and compensation" is to maximize the value pursuit of public welfare protection, let those with the damage bear responsibility, solve the problem of "enterprise pollution, public victims, and the government pays the bill", truly implement "who pollutes the bill and destroys the repair", and guide the public to make concerted efforts to protect clear waters and green mountains. The amount of compensation determined by "adjustment and compensation" is in strict accordance with the appraisal opinions of professional institutions, and the optimal plan for public welfare protection is designed for the specific situation of the case, so as to ensure that while mobilizing the enterprises involved to actively pay the ecological and environmental damage costs, the enterprises involved have the strength to continue production and development.

(2) Adhere to the notion of combining criminal and civil supervision

In practice, how to not only let environmental polluters assume the responsibility of ecological restoration, but also avoid the enterprises involved in bankruptcy faces the procuratorial organs and a major issue to be solved. The author believes that to actively and effectively play the value of criminal civil public interest litigation, maximum protection of public welfare, better enterprise healthy development, can explore the establishment of "recognition" working mechanism, comprehensive consider damaged public welfare repair and enterprise development, through mediation prompted the enterprise to bear compensation, fully highlight public interest litigation and temperature, fully achieve "win-win win-win" supervision effect, constantly improve the ability level of municipal social governance.
(3) Adhere to the notion of internal and external supervision and restriction

In order to carry out supervision throughout the "recognition" working mechanism, the prosecutor make mediation plan must be submitted to the prosecutors joint meeting, the procuratorial committee to discuss. Conduct collective judgment on the feasibility of the mediation and the legality and rationality of the mediation agreement, and highlight the prosecutor case subject position and strengthen the principle of internal supervision and restriction, to ensure the standard exercise of procuratorial power. Effective use of public interest litigation mediation social supervision mechanism, open is the best external constraints to ensure the public power is not abuse, is the basis of the public exercise of supervision. By inviting people's supervisors to participate in case mediation review, announcing the mediation agreement signed by the people's court, the people's right to know, to participate, expression and supervision can be safeguarded, to ensure the mediation of public welfare.

II. THE OPERATING SYSTEM OF THE WORKING MECHANISM OF "RECOGNITION, ADJUSTMENT AND COMPENSATION"

(1) Integration of similar cases

On the case clues management, relying on the case management department to establish public interest litigation procuratorial and criminal procuratorial case clues sharing platform, case management department in the criminal case, namely the relevant legal supervision clues information rapid search screening and intelligent analysis, the relevant case information through the system platform to the public interest litigation prosecutors, ensure that public interest litigation prosecutors real-time public interest litigation clues, timely synchronous review, effectively solve the criminal civil public interest litigation case clues filtering inappropriate, transfer is not timely, not in place.In the stage of case review and handling, adhering to the principle of coordinated handling of public interest litigation prosecution and criminal prosecution, in the stage of filing and investigation of criminal cases, the public interest litigation procuratorial department started the liaison mechanism to intervene in advance, and integrated civil investigation and other means to form a joint force in case investigation and criminal investigation.In the trial stage of cases, it is insisted that public interest litigation cases should be heard together with criminal cases, and public interest litigation prosecutors and public prosecutors should participate in court investigation and court debate, fulfill the burden of proof, and form a joint force for protecting public welfare and punishing crimes.

(2) Substantive investigation and evaluation

Through the market supervision department, tax authorities and other relevant units to consult information, as well as the enterprise involved, the investigation of the production and operation, debt and environmental protection facilities operation and environmental protection work, comprehensive grasp of the enterprise compensation ability and subsequent pollution control ability. For enterprises involved is not blindly apply the mediation procedure, but according to the case and the enterprise situation, and the scope of damaged public welfare, consequences and social influence, in accordance with mediation law, gradually establish a "recognition" negative list system. Severely punish the continuous pollution, incomplete qualification "scattered" enterprise. For enterprises with little subjective malice and business strength and pollution control ability, they can understand the legal needs and compensation willingness of the enterprises involved by listening to the situation report and conducting full dialogue and rational communication with the enterprises involved, to ensure the legitimacy and feasibility of mediation. By clarifying the procedures and annotation of public interest litigation to the enterprises involved, the composition of ecological damage compensation expenses and the significance of mediation, carrying out damage compensation consultation in an orderly manner, optimizing and adjusting the amount of compensation, time or way of performance, guiding the enterprises involved to correctly weigh the pros and disadvantages and properly choose dispute solutions.

(3) Standardization of mediation procedures

After discovering the case clues, the procuratorial organs have a comprehensive understanding of the case in the first time, adhering to the principle of "can adjust, word adjustment first", to predict the situation through the comprehensive analysis of the mediation conditions of the case.In the process of handling cases, we adhere to the principle of "voluntary and legal" mediation, carefully examined the infringement, harmful consequences, causal relationship and other facts of the case, and guided, through comprehensive investigation, careful analysis and in-depth communication, the enterprises involved to form a mediation will and create conditions for the successful mediation of the case.To ensure the fairness of mediation and public welfare, avoid power rent-seeking, mediation agreement must be strictly limited at the end of the trial, case facts, "facts, distinguish" is an important premise of the mediation process, through trial cross-examination, the defendant to environmental damage degree, pollution damage calculation and other key issues have a clear understanding, the procuratorial organ is easier to guide the mediation, promote damaged public welfare relief and protection as soon as possible.At the same time, the performance of "one-time payment in place, one-time payment is supplemented". In order to ensure the performance in place, the installment payment is agreed in default according to law.

III. THE ACTUAL EFFECT OF THE WORKING MECHANISM OF "RECOGNIZING, ADJUSTING AND RECOGNIZING AND COMPENSATION"

(1) Maximizing the public interests

Procuratorial organs use "recognize" working mechanism of compensation, generally require environmental polluters in mediation agreement to pay ecological environmental damage first, so that "adjust" and "compensate" step in court, one step in place, and avoid the subsequent execution risk, greatly shorten the case cycle, to ensure that the damaged public welfare get timely repair.In terms of ecological restoration, in response to the interest needs of damaged subjects, establish diversified ways of responsibility fulfillment, repair by paying compensation, agent performance and planting public welfare forests, promote the combination of compensation and treatment, solve law enforcement problems and public welfare problems from the source, and build a "procuratorial barrier" for ecological and environmental protection in an all-round way. Through the working mechanism of "adjustment and compensation", the enterprises involved consciously sent a letter of apology to the public, making other enterprises feel the leniency of justice, encourage and force enterprises to make spontaneous transformation and upgrading, promote the ecological environmental protection from end governance to front-end prevention, and achieve the good effect of "handling a case and governance".

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(2) Serving the development of enterprises to the maximum extent

The traditional industry is in the transformation and upgrading, across development. The procuratorial organs under the high pressure, to use the rule of law thinking and rule of law, considering the significance of the public interest litigation, and consider the future development of the enterprise involved, to meet the conditions of "recognition" enterprises involved, on the basis of ensuring ecological restoration, according to its business situation and compensation ability, reasonable determination of compensation coefficient and compensation method, make the enterprise retain the ability to continue to operate after paying ecological damage compensation. At the same time, attention should be paid to reshaping the corporate image and maintaining the commercial reputation. The enterprises involved in the case through mediation should adopt positive publicity methods to reduce the negative impact and ensure the normal commercial activities of the enterprises involved. The "recognition and compensation" of the enterprises involved can be used as an important consideration of the "leniency of confession" system for entrepreneurs and technical backbone. It is conducive to grasp the judicial strength and temperature, implement the system measures of care and caring for entrepreneurs, so that entrepreneurs can "light" again and give back to the society with practical actions.

(3) Maximizing our participation in social governance

Public interest litigation often involves the interests of multiple groups. Case processing results will have a direct impact on the public interest, social and economic development. "Recognition" working mechanism integrates the concepts of rule of law thinking, win-win, procuratorial leading and so on in many dimensions, realizes the public interest protection and maintains enterprise development win-win situation, avoids "run a case, collapses a enterprise, a laid-off group of workers" phenomenon, consolidates the micro foundation of employment, steady growth, to escort "six stability" "six" related deployment integration. In the process of handling cases, we actively practice the experience of Fengqiao, overcome mechanical case handling, take the initiative to understand the operation of the enterprises involved in the case, reasonably take into account the concerns of the enterprises, deeply interpret the law, so as to settle disputes and settle cases, complete the cases and resolve conflicts from the source, and promote good social governance. We will fully perform our function of legal supervision, urge administrative law enforcement organs to work together to introduce ecological restoration plans, enhance the effect of coordinated governance, gradually establish a pattern of ecological and environmental protection in which social governance subjects participate extensively, and promote social co-governance.

CONCLUSION

Public interest litigation is an important institutional design to promote the modernization of China's governance system and governance capacity through the rule of law thinking and way. It is a true portrayal of the advantages of the socialist system with Chinese characteristics into governance efficiency. As an important form of public interest litigation, civil public interest litigation has obvious advantages in saving judicial resources, improving litigation efficiency and forming a joint accountability force. Especially during the 14th Five-Year Plan period, focusing on protecting the ecological environment and optimizing the business environment, we will establish a working mechanism for "recognizing, adjusting and compensating" civil public interest litigation incidental to criminal cases, give full play to the multiple functions of criminal, civil and public interest litigation. Under the conditions of the clear facts of the case, comprehensively consider the factors of damaged public welfare restoration and enterprise development, urge ecological damage to take the initiative to bear the liability for compensation through mediation according to law, to realize the value pursuit of maximizing public welfare protection, and promote the organic unity of ecological protection and economic development.

Acknowledgement

This work is supported by 2021 Procuratorial Application Theory Research Project "Certification Standard and Responsibility of Procuratorial Environmental Civil Public Interest Litigation" funded by the Supreme People's Procuratorate of the P.R.China; Zibo Major Research and Development Plan "Empirical Research of Public Interest Action Mechanism for Ecological and Environmental Damage Restoration in Zibo City" (Research grant number: 2019ZBXC280).

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