

# Theory, Practice and Optimization Path of Criminal Incidental Civil Environmental Public Interest Litigation

## --Take 735 Environmental Crime Judgment Documents as Samples

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### Abstract

There are many problems in the current criminal civil ecological environment public interest litigation in the procedure specification, appraisal, implementation guarantee, fuzzy legislation, regulation, the practice can not be ignored, so it is necessary to strengthen the top-level design to promote the implementation of the litigation system, enhance the effectiveness of judicial effectiveness. This paper tries to provide the legal guarantee for the civil ecological environment public interest litigation from the perspective of standardizing the starting procedure, solving the identification dilemma, establishing the special fund and improving the supervision system, and escort the governance of environmental crimes.

### Keywords

**Criminal incidental civil public interest litigation; Ecological environment; Optimization path.**

### 1. Introduction

A sound ecological environment is a fair people's livelihood, a well-being of society, and the most inclusive public good. In his 20th report, General Secretary Xi Jinping emphasized the promotion of Chinese-style modernization, in which "modernization of harmonious coexistence between man and nature" is the foundation. In recent years, China has been constantly exploring the top-level design of ecological and environmental governance, and has set up trials and put them into practice to respond to the goals of high-quality development and green and low-carbon development. Procuratorial public interest litigation in 2015 began the pilot, in 2017 to determine the civil public interest litigation system and administrative public interest litigation system, in 2018 jointly issued on the procuratorial public interest litigation cases explain some issues of applicable law (hereinafter referred to as the procuratorial public interest litigation interpretation) marks the criminal incidental formal establishment of civil public interest litigation system. By the end of 2022, China had handled more than 400,000 public interest litigation cases over ecological environment and resource protection, accounting for 52 percent of the total public interest litigation. Criminal incidental civil environment public interest litigation is to combat environmental crime, safeguard public interests, the necessary means of building Chinese modernization, while the current pilot work has achieved good legal effect, also for criminal incidental civil environment public interest litigation to provide many valuable experience, but the public interest litigation is still in the preliminary stage, legislation without unified specification, and the content specification fuzzy situation. This paper intends to start with the theory of civil litigation attached to ecological environment criminal, and take the practical situation as the empirical research object, find out

the problems existing in practice, and explore the optimization path of public interest litigation of civil ecological environment attached to criminal criminal.

## **2. Theoretical proof: the theoretical basis of civil ecological environment public interest litigation attached to criminal crime**

### **2.1. Theory of procuratorial power allocation: give play to supervision responsibilities and improve the level of governance**

The public interest litigation filed by the procuratorial organs is in line with the fundamental political system of the People's Congress of China, which reflects the fundamental attribute of the socialist procuratorial system with Chinese characteristics, and is also a realistic choice to solve the current social problems. In 2017, the procuratorial organs were given the right to file public interest lawsuits from the legislative level. In 2018, the Interpretation on Several Issues Concerning the Application of the Law to Procuratorial Public Interest Litigation Cases (hereinafter referred to as the Interpretation) made it clear that the task of procuratorial organs in filing public interest litigation is to play the role of legal supervision. In the Organic Law of the People's Procuratorate and other relevant laws and regulations, it is also clearly stipulated that the procuratorate has the basic duty of filing public interest lawsuits to safeguard the public interests. It is inevitable for procuratorial organs to bring environmental civil action. First, for the same purpose, it is the Constitution and the representative of the people's interests. The procuratorial organ has its advantages in bringing civil litigation attached to the environment. First, the procuratorial organ is a powerful organ, with the power to check facts, collect evidence and question criminals; second, it has advantages in knowledge mastery, professional ability and professional team. There are many theories about the litigation status of the procuratorial organ, such as the procuratorial organ without the direct interest; the procuratorial organ represents the public interest and the plaintiff has the same rights and obligations of the plaintiff in ordinary civil litigation. In the author's opinion, "public interest prosecution theory" can better clarify the identity of procuratorial organs, which can not only clarify its function of supervising and safeguarding social public interests, but also distinguish it from private interest litigation.

### **2.2. Litigation trust theory: the citizen entrusts the litigation right, the state on behalf of the realization**

The theory of litigation trust means that when the social and public interests entrusted by citizens are violated, the state appoints the entity power and the right of action to the state organ, so that the state organ will file a lawsuit on its behalf. At the end of the 19th century, professor Joseph Sachs, a famous American scholar, introduced the public trust theory into the field of environmental protection for the first time, opening up a new ecological field for ecological and environmental problems. Sachs believes that water, sunshine, wildlife and animals are jointly owned by all people, and citizens give these resources to the state in order to better manage their public property, thus forming the trust of the state and the people. This theory covers two-way power and obligation relations, that is, citizens have the right to require state organs to enjoy environmental protection, and the state has the obligation to protect the environment entrusted by citizens. This theory from the original application of Rome, to the UK great protection of fishing and commercial use, and then to the United States in the entertainment, ecology and other larger applicable fields, after a period of development, has a certain space for application, especially popular in the civil law system. Under this theory, the state distributes the right of public interest litigation to the subject of eligible state organs. The theory of litigation trust takes into account the lack of citizens' ability and willingness when filing environmental protection litigation, and breaks through the traditional requirement

requiring the parties to the right of litigation to be a direct interested party, that is, the authorized state organ is not a direct interested party but also has the rationality and suitability of filing a lawsuit. The rights are limited to the defensive rights to free from infringement and seek relief, and the citizens enjoying public interests are the ultimate beneficiaries and enjoy environmental rights. The theory of litigation trust adapts to the serious damage of the current ecological environment, so it is urgent to improve the judicial governance of the ecological environment and realize the social situation of harmonious coexistence between man and nature.

### **2.3. Environmental rights theory: safeguard the basic rights of the public and improve the ecological environment governance**

As the name suggests, the theory of environmental rights is the right to enjoy a healthy, comfortable and beautiful environment. American professor Sachs first put forward the theory. In the 1960s, the ecological environment faced serious pollution, and the theory came into being. In the opinion of Professor Sachs, enjoying the better ecological environment is the most basic right of every citizen, everyone should survive in the environment that is not polluted, and some people polluting the environment should not be paid by others. Therefore, state organs or citizens have the right to file a litigation right to maintain a good ecological environment. Japanese scholars put forward the concept of environmental rights in the 13th Human Rights Support Conference of the Japanese Lawyers Federation, and pointed out that citizens have the right to file lawsuits with the court to stop environmental damage and demand environmental restoration. At present, many countries have written environmental rights into the Constitution. The establishment of environmental rights is conducive to the protection of the basic rights of citizens and the development of environmental protection activities. The subject of environmental right is the citizen, not including enterprises and state, which is the right of environmental resources, the right to know about environmental conditions and the right to claim for environmental infringement; the only object of environmental right is "environmental ecological function"; the content of environmental right is the ecological right of good environment, and does not include the right to use environmental capacity. In the opinion of German public jurist Geogyellinek, environmental rights is public law and private rights, and it is the inherent right to file public interest litigation to safeguard the existence of private rights. The proposal of environmental rights provides a solid theoretical foundation for citizens to safeguard their own environmental interests and strengthen the improvement of social environment.

### **3. Practical status of civil ecological environment public interest litigation attached to criminal crime**

Since 2018, the number of environmental public interest litigation cases and ecological and environmental damage compensation cases accepted by the people's courts has increased. In 2022, courts nationwide accepted 5,885 environmental public interest litigation cases and concluded 4,582 cases; accepted 221 cases of ecological and environmental damage compensation, and concluded 153 cases. In order to objectively show the current situation of civil ecological environment public interest litigation attached to criminal, the author takes "environmental pollution crime" and "civil public interest litigation attached to criminal" as the key words, in the Chinese judgment documents network search, excluding the judgment documents that do not belong to the search scope, a total of 735 valid judgment documents. This paper intends to take the 735 environmental crime judgment documents as a research sample to analyze the basic situation and existing problems of civil ecological environment public interest litigation practice attached to criminal cases.

### **3.1. Basic situation of civil ecological environment public interest litigation practice attached to criminal cases**

Regional distribution of the cases. In the current data retrieved from 2017 —— 2023 (before August), the top seven provinces in the number of judicial documents were: Guangdong (115), Jiangsu (111), Hebei (87), Anhui (72), Shandong (59), Henan (41) and Liaoning (40), accounting for about 7 percent of all cases. Most of the cases occurred in the provinces that had explored the civil public interest litigation with criminal cases in the early stage and those that had piloted the procuratorial public interest litigation.

Distribution of case types. Environmental pollution cases are concentrated in the discharge, dumping and disposal of pollutants, air pollution, water pollution and soil pollution, including more than 402 cases of discharge, dumping and disposal of pollutants exceeding the standard, 15 cases of air pollution, 89 cases of water pollution, 75 cases of soil pollution and 154 cases of other types. The discharge of toxic and harmful substances is most, more than half, including the dumping of toxic substances in seepage pits, dumping of factory residues in fish ponds, illegal disposal of chemical waste, dumping of waste tar, etc., which cause different degrees of pollution to the ecological environment.

Lift up the subject distribution. In the launch of public interest lawsuits over civil ecological environment attached to criminal cases, most of them were filed by procuratorates, or 701, accounting for 90 percent, while only 34, that is, less than 10 percent of the cases, were filed by social organizations or environmental protection agencies such as environmental protection bureaus. A large number of social organizations are the Friends of Nature Environmental Research Institute, the China Foundation for Biodiversity Conservation and Green Development, the All-China Environmental Federation and other non-profit organizations.

Distribution of punishment types. In the judicial judgment, the judge according to the Supreme People's Court of the Supreme People's Procuratorate on the handling of environmental pollution criminal cases applicable law issues, the Supreme People's Court on environmental civil public interest litigation cases explain some issues of applicable law "(hereinafter referred to as" some issues interpretation "). The main liabilities include compensation for ecological environment restoration costs (589 cases), 70% for appraisal fees or appraisal expenses (515 cases), 60% for apologies (441 cases), and 40% for restoration (302 cases). There are many overlapping liability methods.

### **3.2. There are some problems in the practice of civil ecological environment public interest litigation attached to criminal cases**

#### **3.2.1. The starting subject is relatively single, and the responsibility is limited by the starting subject**

The subject of ecological environment relief includes procuratorate, administrative agencies and social organizations, but in the civil ecological environment public interest litigation, the procuratorate is "one dominant". At present, there are different opinions on the subject of public interest litigation and the subject of the public interest litigation. Some believe that it can only be filed by the procuratorate. Some believe that the subject of the prosecution is "the public prosecutor in the criminal litigation and the prosecutor in the civil public interest litigation". Although the former emphasizes the independent value of civil public interest litigation attached to criminal cases, it ignores the compound nature of such litigation and the value orientation of restorative justice. According to Article 101 of the Criminal Procedure Law and Article 20 of the Interpretation of Procuratorial Public Interest Litigation, the qualification of the People's Procuratorate to file a civil public interest lawsuit attached to a criminal has been confirmed, but administrative organs and other organs or organizations have not been clearly granted the subject qualification in the law. Article 58 of the Civil Procedure Law, Article

1235 of the Civil Code and Article 1 (Interpretation of Several Issues) stipulate that all organs and organizations, including the people's Procuratorate, have the right to file civil public interest litigation. Paragraph 2 of Article 58 of the Civil Procedure Law stipulates that the procuratorial organ is not the only subject of public interest litigation, nor does it have the priority. Clends the procuratorate is the only litigation subject point of view, there is no procuratorate before litigation announcement, and another point of view, the procuratorate before litigation announcement is crucial, in the people's procuratorate on criminal incidental civil public interest litigation should perform the approval before litigation announcement procedure "(hereinafter referred to as" the "approval") requires strictly implement the pre-lawsuit announcement procedure. Due to the vague expression of civil public interest litigation attached to normative documents, only a few social organizations file environmental criminal litigation in practice.

### **3.2.2. Difficulties in ecological environment damage identification**

Through samples, part of the environmental crime appraisal cost is uneven, or "price", or moderate price, high price is not a few, zhang mou a crime of environmental pollution criminal judgment appraisal fee 160000 yuan, in Chen Shanbo environmental pollution criminal verdict appraisal fee is as high as 550000, appraisal fee has thousands of yuan, such as zhang so-and-so environmental pollution crime criminal incidental civil case first-instance criminal judgment evaluation appraisal fee of 5000 yuan.

Environmental forensic expertise involves professional knowledge and comprehensive identification means in various fields, and one of the reasons for the high cost of identification is that there are few identification institutions and the demand is in short supply. Relevant data show that by the end of 2021, there were more than 2,900 judicial expertise institutions examined and registered by judicial administrative organs, more than 37,000 judicial experts, and the annual business volume of judicial expertise reached more than 2.8 million. This number is far from enough to adapt to the current number of cases, especially environmental crime cases need identification talents, and the allocation of resources in China is unbalanced, most of the identification talents are concentrated in universities and research institutes in Beijing, Shanghai and Guangzhou, while the identification talents in underdeveloped areas are scarce.

First of all, the main bodies of the appraisal institutions in China are diversified. In addition to the national judicial appraisal institutions, there are also some universities, research institutes and companies. Of course, the diversification of subjects can alleviate the problem of more cases and fewer talents to some extent, but inevitably there are some differences in the qualifications, abilities and appraisal angles of different subjects, and the differences in technology, equipment and personnel lead to the large differences in appraisal conclusions. Secondly, the management system of appraisal institutions in China is not complete. At present, China's appraisal institutions have not yet established a unified management mode, and there is no subordinate relationship between each other. Therefore, when environmental crimes in multiple fields, it is difficult for various appraisal institutions to form an effective cooperation mechanism.

### **3.2.3. The management system and use rules of ecological restoration compensation funds are not perfect**

First, the collection and use of ecological restoration compensation funds are not the same. According to the issuance of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Finance and the Ministry of Ecology and Environment in March 2020, the compensation funds for ecological and environmental damage are non-tax revenue from the government and shall be collected centrally by the state Treasury. But charge in practice judgment is very chaotic, what so-and-so, Hu Mou, zhang mou a crime of environmental pollution first-instance criminal judgment judgment direct compensation to "environmental

protection bureau", wang mou environmental pollution of first instance criminal judgment "pay compensation to the people's procuratorate, the people's procuratorate Treasury", ZhuYu for environmental pollution of first-instance criminal judgment "the fee to environmental protection fund account, specially used to repair damaged ecological environment". The criminal judgment of the first instance of environmental pollution said: "pay to the account designated by the court for environmental remediation and treatment of the polluted area". In addition, the use of ecological damage compensation in the judgment documents is not the same. Some are expressed as "compensation for ecological environment restoration fee" some are expressed as "used for ecological environment restoration" some are expressed as "pollution removal fee" It can be seen that there is no unified standard for the disposal of environmental restoration funds in the judgment.

Second, it is difficult to guarantee the repair funds after environmental crimes. Environmental crimes are hidden and long-term, and environmental restoration often requires a lot of manpower and material resources. However, in practice, there is no detailed and specific supporting system for the implementation and supervision of the ecological environment. The judgment documents only specify the ownership of funds, but the subsequent implementation cannot be known, and the degree of restoration cannot be guaranteed. To be specific, first of all, the lack of joint supervision by professional institutions: courts and procuratorates lack professional knowledge, so it is difficult to formulate professional repair plans, and can only play a limited supervision role. However, the joint supervision of the judicial organ and the environmental protection department or the supervision of the appraisal institutions have not been clear legal norms, so the current management mechanism of environmental remediation costs and compensation funds should be put on the agenda in time. Secondly, the lack of environmental repair path: environmental repair work is technical and complex, so it often requires a third party to introduce repair personnel. However, the current legislation has not yet clarified the specific operation guidelines for the third party to replace repair, including qualification, advance funds, etc., have not been stipulated, so it also affects the effect of environmental repair to a certain extent.

#### **4. Optimize the path of civil public interest litigation with criminal ecological environment**

##### **4.1. Standardize the starting procedure and support the diversification of the starting subject**

Ecological environment protection is a protracted war, to protect the social public interests, to defend the hills and green, to implement the strictest ecological environment protection system, it is necessary to promote the start subject diversification, as mentioned above, relevant legal norms in addition to the procuratorial organs, legal organs and organizations can also bring environmental civil public interest litigation. Although the Supreme People's Court (Interpretation of Several Issues) stipulates that "organs and relevant organizations stipulated by law" can file civil public interest litigation, it does not confirm the subject scope of civil public interest litigation attached to criminal cases. The author believes that the subject of the civil environmental public interest litigation attached to the ecological environment criminal should include "the organs and relevant organizations stipulated by law". First of all, environmental crimes are long-term and frequent in recent years. A single initiator will increase the pressure of the procuratorate, and it is inevitable that it is sometimes difficult to take both. However, multiple initiators can disperse the pressure of the procuratorate and take a multi-pronged approach to form a joint supervision force and promote ecological and environmental governance. Secondly, the civil public interest litigation attached to criminal action is a compound action of criminal litigation and civil litigation, so the independence of civil litigation

should be maintained, and the natural subject should be no different from the subject of civil litigation. From the perspective of the purpose of public welfare protection, the diversification of qualified plaintiffs is a key part of the comprehensive prevention and remediation of ecological damage in China. This move can gather social forces, strengthen social supervision, deepen the public awareness of environmental protection, and promote the construction of social ecological and environmental protection.

In view of the problem of pre-litigation announcement in the starting conditions of criminal incidental civil public interest litigation, some scholars advocate the cancellation of pre-litigation announcement. Academia based on the defendant custody period, improve the efficiency of litigation, save judicial resources value pursuit, before the procedure of broad social groups such as social organization, file "confidentiality" is impacted and claims to cancel the announcement procedure, and "approval" still requires to carry out the announcement procedure before litigation. In the opinion of the author, we can weigh the case situation and set some indicators to judge, such as pollutants, pollution range, loss assessment, the number of radiation and other aspects to make a comprehensive judgment on whether the pre-lawsuit announcement procedure can be cancelled. Or in order to avoid the judge's excessive discretion whether to consider directly cancel the pre-lawsuit announcement, it is necessary to carry out legislation or judicial interpretation to clarify this situation.

## **4.2. Standardize the appraisal management system and solve the identification problem**

### **4.2.1. Standardize the appraisal and evaluation fee standards**

At present, the high cost of environmental crime identification is high in addition to the high cost caused by difficult identification and long time, but also the charges of appraisal machines. Therefore, each region can regulate the appraisal fee according to the regional finance and economic development level, and stipulate the appraisal fee according to the amount of the litigation target. The administrative organ may negotiate with the price administration department to formulate clear and highly operational regional charging standards, but they shall not exceed the national standards. The types of identification are classified and refined, and the standard interval of charges is formulated combined with the difficulty of identification of different environmental pollution types. In view of the environmental appraisal fees, the author suggests that the judicial administrative organs should earnestly strengthen the construction, management and supervision of environmental damage judicial appraisal, formulate a unified charging standard or industry guidance price for appraisal fees, and strengthen supervision to effectively reduce the appraisal fees .

### **4.2.2. Recognition of the professional evaluation report has the same effect as the identification**

Current in practice there are a few cases in the form of professional evaluation, on the one hand, may because there is no special appraisal institutions can identify, such as in yong-ming zhang, zhang lu first-instance civil judgment issued by the case is the three mountain python peak damage value evaluation report, on the other hand may be due to a unified standard and many professional institutions are not willing to identify. For example, in the case of Wang Moujun's illegal fishing, because there is no unified standard for the damage identification of electric fishing, so Cao Yong's professional evaluation report method. China's judicial interpretation and other legal norms recognize the form of professional evaluation report, but it has not yet been popularized to the same status as identification, so in the future judicial practice, the professional evaluation report form can be promoted for more clear, simple and similar cases to form a model of expert + report.

### **4.2.3. Standardize the management system of appraisal institutions**

In view of the fact that there is no unified management system for appraisal institutions in China, the judicial administrative departments can establish access standards for appraisal institutions, conduct unified management of appraisal institutions in different regions, form unified technical norms, and establish a universal appraisal system to regulate the appraisal standards of different appraisal institutions. And implement environmental standards. In detail, according to the classification standards of the field, category and scope of identification, the specific environmental baseline is determined, so as to form a more accurate assessment of environmental damage and enhance the credibility of the results. The appraisal roster shall be formed for selection. When the appraisal institutions have illegal fees or false appraisal, the judicial administrative department shall rectify them and eliminate the quota. In addition, for the appraisal cases that need to be combined with multiple fields, the administrative competent departments shall organize and coordinate the appraisal institutions in the involved fields to complete the appraisal, so as to ensure the accuracy of the appraisal results.

## **4.3. We will improve the supervision system for compensation funds for ecological restoration**

### **4.3.1. Improve the management system for collecting and managing ecological environment restoration fees**

According to the collection of ecological environment restoration fees, establishing a special public interest litigation fund is a more feasible and recognized by the theoretical and practical circles. Article 14 of the Opinions on Comprehensively Strengthening the Trial of Environmental Resources to Provide a Strong Judicial Guarantee for Promoting the Construction of Ecological Civilization has stipulated the special fund system, which has outstanding advantages in the establishment of special funds compared with transferring the cost of environmental restoration to the state Treasury. We can build a tripartite supervision model of foundations, government agencies and the public, form a social coordinated supervision model, broaden the supervision channels, and enhance the scientific and effective supervision. In addition, the special fund manages the environmental restoration funds through corporate operation, which not only increases the transparency, but also facilitates the access, so as to achieve the effect of special purpose. In practice to vigorously promote environmental restoration special fund system, form a longitudinal —— national, provincial, city and county (area) of the national and local public interest litigation special fund, transverse —— ecological environment, natural resources, environmental protection agencies, financial departments and other administrative law enforcement coordination mechanism of ecological environment repair public welfare fund project. It stipulates that the environmental protection departments, the procuratorates and the auditing departments shall, in accordance with their functions and powers, manage the public interest litigation funds, form detailed management rules, and stipulate the responsibility situation, the use and supervision procedures of the departments. The income and expenditure of the funds and the use of them should be registered in detail, and the data can be disclosed through the official website of the foundation and subject to social supervision.

### **4.3.2. We will improve the implementation and supervision mechanism for environmental restoration**

Form the execution synergy mechanism. First of all, the judicial organs shall exercise the general supervision power to supervise the subsequent implementation. In the written judgment to carry out the specific regulatory responsibilities, to make the ecological restoration more enforceability, specified in the referee detailed repair requirements and supervision of the relevant money, and can specify the relevant departments for technical guidance, should also be periodic inspection and finishing work completion records, and open, accept social



supervision. Secondly, environmental protection departments should participate in the work of environmental remediation and supervise the implementation. Control the time, quality and effect of the repair, establish a certain evaluation and identification mechanism to carry out detailed supervision of the implementation, so as to promote the implementation, development and improvement of the implementation. Finally, can introduce a third party supervision mechanism, environmental repair process difficult, technical, it is necessary to introduce a third party regulation, put forward guidance on environmental repair process, professional appraisal, acceptance of the results, and to a certain extent to ensure the quality of environmental repair, guarantee environmental repair execution, promote environmental governance.

## 5. Conclusion

As an important part of environmental governance, public interest litigation of civil ecological environment attached to criminal crime is of great significance for saving judicial resources, promoting environmental governance, effectively combating environmental crimes and improving governance efficiency. In practice, the application scope of the system has been continuously expanded, and the number of applications to the system has been increased, but the system is still unclear and absent. Practice has proved that in addition to the incomparable advantages of other systems, there are also some problems that cannot be ignored. It is necessary to face up to the problems and adjust them, so as to more adapt to the development of The Times and promote the effective implementation of the system. To be specific, starting from the aspects of procedure and entity, the regulation will start the procedure, clarify the standards of criminal people certificate, standardize the appraisal management, and improve the fund management mechanism. This paper's research on civil ecological environment public interest litigation is still simple, and we still need to strengthen the research on the procedure setting and the subsequent implementation guarantee, so as to promote the effective implementation of the system and improve the level of environmental governance.

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