

The Necessity of Establishing Administrative Litigation for Environmental Public Interest in China: Views From the Case of Baiwang Jiayuan

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The Necessity of Establishing Administrative Litigation for Environmental Public Interest in China

1. Details of the Case

2. The legislative limitation in protecting public interest in China as evidenced by this case

3. The Necessity of Establishing Environmental Administrative Public Interest litigation in China

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1. Details of the Case

Two 220KV/110KV electricity transmission towers for Xishatun-Shangzhuang-Liulangzhuang were located in the public greenbelt of the Baiwang Jiayuan residential area.

Residents complained to the Beijing Environmental Protection Bureau (BEPB)

➔ Claiming that electromagnetic radiation will cause damage to their health and property

BEPB investigated

➔ Found that the project construction company did not perform an environmental impact assessment

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BEPB's Decision

June 22, 2004

Ordered the construction company

- To shut down the project
- To do the environmental impact assessment

August 13, 2004

Hosted a hearing on environmental impact assessment

September 6, 2004

Approved the project's environmental impact assessment

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Application for Administrative Reconsideration

September 21

■ To Chinese State Environmental Protection Administration (SEPA)

Rejected

September 30

■ To Beijing municipal government

Rejected

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Administrative Litigation

At the Hearing of August 13, 2004, the residents of Baiwang Jiayuan learned that:

- The project was carried out under "the permit for construction projects" and
- The permit was issued by the Beijing Municipal Commission of Urban Planning .

The residents filed administrative litigation in Haidian District People's Court of Beijing, claiming:

- The Beijing Municipal Commission of Urban Planning violated the law
- Its administrative action of issuing the " permit" infringed on their property and personal rights
- They requested the court cancel the "permit " for the projects

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Judgment of Haidian District People's Court of Beijing

<p>Result</p> <p><u>The court Dismissed the case</u></p>	<p>Reason</p> <p><u>The residents have no standing :</u></p> <p>They are not able to prove the material interests between them and the administrative action</p>
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Appealed to Beijing No 1. Intermediate People's Court

<p>Result</p> <p>☛ The judgment of the lower court was correct.</p>	<p>Reason</p> <p>☛ The claim of residents was groundless</p> <p>☛ The relationship between electromagnetic radiation and the injury to health and property is uncertain at present.</p>
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2. Legislative limits in protecting the public interest in China as evidenced by this case

- Litigation protecting the public interest are excluded from judicial review
- Judicial review can be undertaken only if the damages caused by the administrative action were Provable which requires high level of causation.
- Abstract administrative action is not in the extent of administrative litigation

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Problems in protecting the public environmental interest

Public interest litigations are excluded from judicial review

In the case of Baiwang Jiayuan, the endangered interests are not just to the residents of Baiwang Jiayuan, but also to the general public.

The project also affected the natural landscape and historic sites Going beyond the private interests of the residents. (Summer Palace and Baiwang Forest Park)

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Problems in Protecting the Public Environmental Interest

Judicial review would be taken only if the damages were provable


<p>According to the principle of "prevention"</p> <ul style="list-style-type: none"> • "Damage" indicates • Not only the actual loss but also potential loss • Not only health and property loss but also other forms of loss: aesthetic damage, and damage to historic sites and natural landscapes • Unprovable liability doesn't mean that the damage doesn't existence. 	<p>Practices in China:</p> <ul style="list-style-type: none"> • The courts did not acknowledge the administrative action's liability in the violation of the plaintiff's right. • The damages must be strictly related to property loss and health damage, even if the administrative actions engendered damage. • A high level of causation is required.
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Problems in Protecting the Public Environmental Interest

Abstract administrative action is precluded from judicial review

- ☛ Many types of public interest are infringed by abstract administrative actions.
- ☛ This affects many types of administrative actions.



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3.The Necessity of Establishing Environmental Administrative Public Interest litigation in China

Because of severe pollution in the Songhua River and Tuojiang River

- ④ Suggestions from Scholars
- ④ Advocacy of representatives of NPC and members of the national committee of CPPCC
- ④ Encouragement from the State Council



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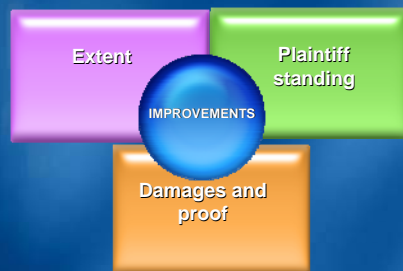
Achievements in Environmental Civil Public Interest Action

Recently, "the Amendment of the 'Civil Procedure Law of P.R.C'" (the 4th draft) has been finished by a research group led by Jiang Wei, professor of Renmin University of China.

The environmental civil public interest action was specifically stated in that draft

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Establishing Administrative Litigation to Protect Environmental Public Interests



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1 The extent of Administrative Litigation in Protecting Environmental Public Interests

Include administrative actions and improper "abstract" administrative actions in the Environmental Administrative Public Interest Procedure

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Plaintiff's Standing

Give standing to environmental protection organizations (NGOs) and the procurator so that the public is able to protect its rights

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Damages and Proof

Potential losses should be enough under the principle of "prevention" or "risk prevention".

The defendant should be responsible for providing proof under the principle of "inverse responsibility of providing proofs".

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Thank you for your attention!