

公益訴訟當事人不適格之省思（下）

張 瑋 心*

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關鍵詞：公益訴訟、當事人適格、環境議題、行政權、司法權。

Keywords：public interest litigation, standing, environmental issues, the executive power, the judicial power.

責任編輯：黃右瑜

* 私立中國文化大學法律學系兼任副教授。

摘要

對於公共利益的保護，舉凡環境污染、食品衛生、垃圾處理等與人民生活安全切身相關者，人民當應擁有監督的權利與責任，然囿於目前我國行政法規對於公益訴訟當事人資格的限制，公益訴訟的成效並不彰顯。中國則係於今年正式授權檢察官查辦公益訴訟案件的權利，期待檢察官除打擊犯罪外，能同時負起追究行政機關的不作為、亂作為、或疏於品管等危害人民權益之責任。檢察官乃公益之代表，所以直接由制定法明定檢察官為公益訴訟當事人適格，要屬合理。惟，我國行政權與司法權之分際，向來不容逾越，要全面立法規範恐有一定之阻礙，而刑事專長的檢察官，如何分身、劃分職責，也是考驗。況且行政責任的調查屬行政法院之權限，而公益訴訟的類型多樣，有單純行政違失、刑事違法、或兩相重疊部分，如何確保人民憲法上權利不受限縮，疑慮不小。本文旨在支持公民訴訟的落實，而非反對檢察官的公益訴訟權，故而先概述臺灣檢察官的角色、地位及權限範圍，再以反向說明放寬人民為公益訴訟當事人適格較為可行。

Review on Lack of Standing in Public Interest Litigation

Wei-Hsin Chang

Abstract

For the protection of public interests, such as environmental pollution, food sanitation, waste disposal and other matters associated with people's life security, people should have the right of supervision and responsibility, but due to the current administrative rules' limitation on public interest standing, public interest litigation is not as effective as demonstrated. However, China this year officially authorized prosecutors to deal with rights of public interest litigation case and expect prosecutors in addition to fighting crime, who can also bear the responsibility of administrative omissions, crimes or any other harms people's unlawful decisions resulting in infringement of people's rights. Prosecutors are the representatives of the public, and granted standing directly through the statutes seem proper and reasonable. However, the line of separating the executive power and judicial power has been thought un-crossable, and to comprehensive legislation to regulate their standing would face many obstacles. After all, prosecutors are excelled in criminal expertise, and how to make segregation of duties between administrative and criminal matters would not be easy. Administrative investigation is concerned with the executive powers, not crimes, but various types of public interest litigation could be involved in both of administrative omissions with crimes. How to ensure that people's constitutional rights are not restricted when two overlap is a big doubt. This paper aims to support the implementation of public interest litigation, rather than to be against the Prosecution's right of public interest standing. Thus, we start with an overview of the prosecutor's role, status and duties in Taiwan, and next we think backwards to prove people's standing in public interest litigation cases is more feasible.