



Construction and Improvement of Civil Code from the Perspective of Ecology

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Author's contribution

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ABSTRACT

With the continuous introduction of policy documents, China's ecological civilization construction is gradually advancing. Ecological civilization needs legal response. China's General Principles of Civil Law established "green principle" as the basic principle of civil law for the first time, and carried out through various systems in the specific provisions of civil code. This paper adopts the sociological analysis method to sort out the interaction between legislation and society, and then puts forward some Suggestions to improve the legislation of civil code. In the published draft of civil code, the Ecologization of Torts Law is the highlight, and the compensation system for ecological environment damage is detailed and specific. However, there is still much room for improvements in property rights, contract and personality rights. In order to meet the needs of ecological civilization construction, the real right system should be adjusted in the concept of real right and the attitude of animals; the contract system should make a breakthrough in the named contract types and regulate carbon trading; in the specific personality right system, the environmental right should be protected by the expansion of the protection of rights and interests in the tort liability law.

Keywords: Civil code; ecologization; real right code; contract code; tort code.

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1. INTRODUCTION

With the increasingly serious environmental crisis, the Chinese government has put forward the construction strategy of ecological civilization. The strategy of ecological civilization requires paying attention to the environment and ecological rights and interests, which brings new challenges to the traditional legal system. Under the guidance of the ecological civilization strategy, the state legislature, the Supreme Court and the Supreme People's Procuratorate are actively adjusting their strategies to meet the social needs, and have issued a series of normative legal documents and judicial interpretations.

The adjustment of civil law is the most typical of the ecological development of China's legal system, and its adjustment process fully shows the tortuous development path of ecological development. At present, scholars at home and abroad are quite enthusiastic about the ecological research of civil law, and a number of representative achievements have emerged.

At the beginning of the 20th century, Xu Guodong, a civil law scholar, put forward the issue of green civil code, which initiated the research of green civil law in the academic circle [1]. At the same time, environmental law scholars also give more enthusiasm to the greening of civil law from the perspective of the promotion of environmental law to civil law [2].

For quite a long time, environmental law scholars have entered the scope of private right relief in civil law from the perspective of environmental rights, promoting the ecology of civil law from the perspective of ecological environmental damage. The promulgation of the General Principles of Civil Law marks the new climax of the ecological research of civil law.

In view of the weak discussion on the civil code in the current research, this paper focuses on the gains and losses of the Green Legislation of the civil code from the interaction of the legislature, and reflects on the adjustment and improvement of the legislation.

2. PROMOTION OF ECOLOGICAL CIVILIZATION AND RESPONSE OF LAW

On November 8, 2012, for the first time, the report of the 18th National Congress of the Communist Party of China set up a single article,

with 7 paragraphs and 1361 words to discuss ecological civilization. Approved in the 18th National Congress of the Communist Party of China, the Constitution of the Communist Party of China first discusses ecological civilization in the general outline with one paragraph and 182 words. It can be considered that the report of the 18th National Congress of the Communist Party of China is the first comprehensive and detailed green program of the Communist Party of China to elaborate ecological civilization.

In China, the ruling party status of the Communist Party ensures the smooth transformation of the party's policy into the adjustment of national strategy. In 2015, the CPC Central Committee and the State Council successively issued the Opinions on Accelerating the Construction of Ecological Civilization and the Overall Plan for the Reform of Ecological Civilization System. These two programmatic documents established the new development concept of innovation, coordination, green, opening and sharing, put forward the goal of overall improvement of ecological environment quality, and pointed out the direction, goal and path for the legal construction of ecological civilization.

The Decision of the Central Committee of the Communist Party of China on Adhering to and Improving the Socialist System with Chinese Characteristics, Promoting the Modernization of National Governance System and Governance Capacity, adopted on October 31, 2019, pointed out that: The system of ecological civilization should be adhered to and improved to promote the harmonious coexistence of human and nature. The promulgation of a series of policy documents has accelerated the construction of ecological civilization in China.

In the new era of China, the interaction between policy and legislation has been strengthened. The policy of the Communist Party of China is actively transformed into the needs and actions of legislation, while effective legislative adjustment ensures the realization of policy objectives. Under the guidance of the goal of ecological civilization construction, China's legislative and judicial organs made rapid adjustments. The National People's Congress accelerated the process of civil code compilation, and the process of civil code compilation proceeded as scheduled.

The State Council, as the organ that formulates administrative regulations, continuously

formulates regional normative documents. In this process, the Supreme Court, as the highest judicial organ in China, continuously issued normative legal documents. Opinions of the Supreme People's Court on Comprehensively Strengthening the Trial Work of Environmental Resources and Providing Strong Judicial Guarantee for Promoting the Construction of Ecological Civilization (2014), Opinions of the Supreme People's Court on Giving Full Play to the Role of Trial Function and Providing Judicial Service and Guarantee for Promoting the Construction of Ecological Civilization and Green Development (2016), Opinions of the Supreme People's Court on Comprehensively Strengthening the Construction of Ecological Civilization in the Yangtze River Valley and Judicial Protection for Green Development (2017), and Opinions of the Supreme People's Court on the In-depth Study and Implementation of Xi Jinping's Idea of Ecological Civilization for Providing Judicial Services and Protection for Ecological Environment in the New Era (2018) have been promulgated one after another.

In this process, the legal coordination between the legislature and the judiciary works well. The judicial interpretation and opinions of the Supreme Court are constantly accepted by the legislature and transformed into national laws. Among them, the most representative is that the Supreme Court's opinion on compensation for ecological damage is directly transformed into the legislative provisions of the civil code.

3. RESPONSE AND IMPROVEMENT OF CIVIL CODE

The goal of ecological civilization construction calls for the ecological change of legal system and law. From the perspective of the legislative process of Chinese civil code and the connotation of its articles, the civil code is the epitome of the ecologization of Chinese legal system. We can see the macro promotion of ecological legislation and the micro dilemma of ecological legislation.

3.1 The Establishment of "Green Principle" in General Principles of Civil Law

Civil law is the law of confirming rights and protecting civil rights. After a long-term legislative adjustment, the green principle has officially become the basic principle of civil law [3]. However, how to treat the position of this

principle in the civil code and how to evaluate its relationship with other principles are still controversial in academic circles.

Generally speaking, the green principle should be used together with the principle of public order and good custom, and the prohibition of abuse of rights. Since the principle of civil law confirms the green principle, environmental interests should be protected by law. The principle of public order and good customs regards the protection of environmental interests as a form of good customs; the prohibition clause of abuse of rights and the violation of environmental interests by abuse of private rights are illegal acts [4]. In this sense, the principles of public order, good customs and green principle form a relatively closed system of environmental rights and interests protection at the basic principle level, so as to realize the substantiation of green civil rights and guarantee the green exercise of civil rights.

From the perspective of the relationship between the Constitution and the Civil Law, the green clause in the general principles of civil law is based on the environmental clause in the Constitution, which gives a reasonable connotation to the environmental right, and marks the implementation of the ecological legal system in the field of civil law.

The codification of civil code is a process of re-combing civil law and a systematic process. The adoption of the civil code in 2020 is the consensus of the society [5]. Whether the specific provisions of the civil code have carried out the green principle and whether there is room for improvement requires further study by the academic circle. Due to the limitation of research materials, the draft civil code discussed in this paper is subject to the latest one.

3.2 Implementation of the Green Principles in specific provisions of the Civil Code

As a whole, General Principles of Civil Law confirm the "green" principle (or ecological principle) in principle, which is a major promotion of the ecologization of the legal system. In the compilation of the specific provisions of the civil code, the legislator also guides the compilation of provisions by the ecological principles. For example, it emphasizes "the requirements of promoting the construction of ecological civilization and implementing the green principle

of General Principles of Civil Law" in the drafting of the contract. However, from the published and predictable articles of the Civil Code, legislative contents of specific provisions are promoted slowly by the "ecologicalization" principle.

The real right part only keeps the existing environmental protection clauses, and there is no breakthrough in the type and the system of the real right [6]. While the condition of the green principle in the contract part has greatly improved in the general principle of contract law. As the basic stipulation of contract, the general principle of contract law has the universal force of legal application to named contracts and the contracts of special law in specific provisions. In the revision of the general principle of contract, the requirements of "promoting the construction of ecological civilization" and green principle are carried out. And there are specific manifestations including the improvement of connotation of the principle of contract performance and the increase of environmental protection obligations.

In the contract obligation group, the connotation of post-contract obligations has continued to expand, increasing the "recycling" obligation. There is a new requirement for connotations aiming at the seller's obligations in sales contract that the seller should bear the recycling obligation in the specific provisions of contract. They are consistent with the requirements of the "E-Commerce Law". Based on the legislative requirements of "syncretism of Civil and Commercial law", there are specific guiding requirements for the commercial law to regulate "The E-Commerce Law".

From the perspective of the contract law, its content is still conservative, and the types of named contracts lack bold breakthroughs. The named contracts in specific provisions lack explicit rules for the contracts that can reflect the requirement of constructing ecological civilization like carbon trading, and its parts relating ecological civilization have not been further adjusted.

The liability for damage to the ecological environment has been perfected by tort liability law [7]. However, the value function of tort law has always been controversial. The monotheism and pluralism for it have their advantages, but the latter has become a more common consensus in the academic circles. The implementation of ecological principles in tort liability law is more manifested in the

improvement of the liability for ecological environmental damage. This revision of the Code that clearly requires improving it in the proposed draft of the Civil Code shows the legislation response to the Party's policy documents.

In order to carry out the requirement of "Strictly implementing the compensation system for those responsible for causing damage to the ecological environment", which is put forward by the Third Plenary Session of the Party's 18th CPC Central Committee, and to implement the decision of "intensifying ecosystem protection" in the report of the 19th CPC National Congress, combined with the reform plan of compensation system for ecological environment damage jointly issued by the General Office of the CPC Central Committee and the General Office of the State Council in 2017, the revised draft which has improved the liability system of ecological environmental damage has two bright spots.

One is to increase the punitive compensation system for ecological environmental damage. In the draft, it stipulates that if the infringer intentionally violates the provisions of the State to damage the ecological environment, the infringed party shall have the right to request corresponding punitive damages. The tort damages system of Anglo-American law which is different from that of the civil law system realizes the function of right relief to the victim through punitive damages to punish the perpetrators with wrong behaviors. This way is helpful to protect the ecological environment from the relief of civil rights. Compared with the traditional civil law theory of civil law system, it is the expansion of civil rights. The other is to clarify the system of restoration and compensation for damage to the ecological environment.

The legislation of personality right is relatively conservative, and its right regulation is more conservative from the point of view of greening. The legislators stress that "the content, boundary and protective ways of the personality rights of natural persons and other civil subjects which are stipulated from the perspective of civil legal norms do not involve civil political and social rights." Based on it, we usually take a more evasive attitude to comprehensive, cross-type rights, which is a main reason to the absence of environmental rights in legislation. Taking a worldwide legislative example, the Ukrainian Civil Code, adopted in 1996, stipulates the non-property rights of natural persons and establishes the connotation of "environmental

security right", but there is still lot of room to discussion for it to become the consensus of the world's legislation.

From the view of the coordination of the various parts of the Civil Code, it is better to realize the practical protection of civil rights by expanding the tort compensation relief. There is a clear stipulation on the object of tort law protection in Article 1164 of Civil Law Code, which not only protects rights but also interests, and leaves a large space for the protection of environmental rights and interests. The author believes that in view of the unclear connotation of environmental rights and the relative conservatism of personality law, it is the most realistic choice to protect environmental legal interests through Article 1164.

4. FUTURE LEGISLATIVE AMENDMENTS TO THE CIVIL CODE

4.1 Analysis on the Causes of the Present Situation of Legislation of Specific PROVISIONS

When analyzing the reasons why there are few breakthroughs in "ecologicalization" in the Specific Provisions of Civil Code, we shall take the actual consideration published at the official level and the insufficient theoretical reserve in academic circles into account.

To explore the reasons for the less breakthrough of "ecological" in the codification of the specific provisions of the civil code, there are not only the reasons for the actual consideration published at the official level, but also the consideration of the lack of theoretical reserves in the academic community.

First, analyzed from the official level, its provisions on the content of legislation focus on stability, more tend to specify the content of maturity. Legislative guidance "The contents that are difficult to be covered and replaced in the provisions that are not suitable to be included in the subdivisions of Civil Code; The contents that are still in the process of development and change, with immature experience and uncertainty cannot be included temporarily". From this point of view, environmental rights, carbon trading and other systems that need to be tested by judicial practice need to be improved at the normative level.

Second, analyze it from the academic level. The implementation of greening in the Civil Code is still impacted by the traditional academic theory. The basic theory of real right in Property Law still stays at the level of the traditional view, emphasizing man's domination over things. Strictly adhering to this point of view would make it difficult to break through the legal status of animals and develop harmonious relationship between man and nature. Specifically, the civil law still regards "animals" as objects in the traditional legal sense. The types of rights protected by tort law still do not protect environmental rights as independent rights, and the protection of environmental rights still stays at the level of the extension of protection of rights and interests.

4.2 The Perfection of the Legislation of the Specific Provisions

The promotion of legislation in the Specific Provisions of the Civil Code should take into account the stability and advancement of the legislation, and properly consider the connection between legislation and the goal of social governance. Under the reality that ecological crisis is becoming more and more severe, the protection of ecological civilization must be strengthened.

The legal status of animals is listed separately Rights In Rem Part. Animals are no longer "objects" in the traditional sense, and cannot simply be regarded as objects dominated by people who are the holders of rights.

At the legal level, China has strictly banned wildlife trade. Ecologically speaking, the relationship between man and wild animals should be kept undisturbed, and wild animals should have their own living space. According to the law, the independence of wild animals should be studied, the legal status of animals should be promoted, and the right to their "physical character" should be set under certain circumstances. In practice, we should take advantage of the favorable opportunity of building national parks to strengthen the construction of wildlife reserves.

In order to renew the legal status of animals in the Civil Code, we must break through the shackles of economic interests, no longer simply from the economic value of animals to treat things, but rationally look at the legal status of animals from the harmony between man and nature to recognize the public commons in the

Civil and Commercial Law and give legal protection of environmental reality for public sharing. Protecting public environmental resources, nature protects wildlife, thus achieving a good ecological cycle.

In the part of the contract, the type of famous contract should be extended in the maintenance of ecological civilization. As carbon trade fairs are becoming more and more frequent under the background of ecological civilization, it is necessary to set relevant contract terms for carbon trading, guide the conclusion of contracts, and reduce disputes to avoid future contract disputes.

5. CONCLUSION

China's modernization has entered the stage of ecological civilization construction, which requires the ecological adjustment of the legal system. As the basic law, Civil Law takes the lead in stipulating the green principle provisions in the General Civil Law. However, due to the shortage of legislation criterion and academic reserves, the Specific Provisions of the Civil Law has made a certain response to the green principle, but the breakthrough is also subject to many limitations. The outbreak of the epidemic at the end of 2019 made the government and the public rethink the relationship between man and nature, the relationship between man and wild animals, and the relationship between man and ecological environment. The epidemic is a good impetus for the ecologicalization of the Civil Law and a good legal model for the prohibition of wildlife trade. The re-cognition of ecological civilization involves the legal modification of ecological civilization, which in turn will promote the perfection of the Civil Code.

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COMPETING INTERESTS

Author has declared that no competing interests exist.

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