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Under the Dual Carbon Goal, Explore a Climate Change Litigation Model Suitable for China

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ABSTRACT

Climate change is a huge global challenge, in the past few decades, the average temperature of the earth has gradually increased, carbon dioxide is the main gas causing the temperature to rise, so reducing carbon emissions is an important measure to combat climate change. March, 2021,the Outline of the 14th Five-Year Plan (2021-2025) for National Economic and Social Development and the Long-Range Objectives Through the Year 2035, adopted on March 11 at the annual session of China's top legislature, has been published in a booklet adopted at the Fourth Session of the 13th National People's Congress,it shows that China has officially put forward the "dual carbon" goal from the national policy level, which reflects China's responsibility as a major country in climate change and its determination to govern. The academic community attaches great importance to the "dual carbon" goal, but because the "double carbon" goal has been proposed for a short time, the legal system is still not perfect, and there is a situation of "policy is popular while law is unpopular" in China. This paper, utilizing both the normative analysis method and the case analysis method demonstrate the difficulties existing in judicial practice, such as the slow progress of climate change litigation in China, the lack of a complete system, the difficulty in arguing the causal relationship, and the lack of clarity in the way of responsibility. In view of the prevailing circumstances surrounding climate change and the realm of public interest litigation pertaining this critical issue, I would like to put forward a series of suggestions, aiming to provide solid support for the country to formulate a more comprehensive and effective climate change policy and legal framework through in-depth exploration of judicial practice. These recommendations focus not only on improving litigation mechanisms, but also on sensitizing the justice system to environmental issues, so as to ensure that the law can more precisely serve the urgent needs of climate change governance.

KEYWORDS

"Dual Carbon" Goal; Climate Change Litigation; Judicial Guarantees.

1. INTRODUCTION

On January 4, 2021, the Supreme People's Court promulgated the Specifications for the Types and Statistical of Environmental Resources Cases (for Trial Implementation), guiding the categorization and data collection of such cases which reflects that climate change litigation is an independent type of litigation in China. Looking back at Chinese judicial practise in 2017, the litigation case of Friends of Nature against the State Grid Gansu Branch for Wind and Solar Abandonment has been widely regarded by the benchmark for climate change litigation in the narrow sense, which not only marks a milestone breakthrough in the field of climate change-related litigation in China, but also profoundly stimulates the in-depth discussion and widespread attention of the legal community on this emerging legal issue. This case is not only a challenge and expansion of the existing legal framework, but also

an important practice to promote the deep integration of law and environmental protection policies and jointly respond to the challenge of global climate change. However, the progress of climate change litigation in China is slow, and a complete system has not yet been formed, and there are difficulties such as a small number of cases and difficult trials[1].

The current research on climate change in China began in the early 21st century and is still in its infancy. Some scholars believe that there is a deep connection between climate change litigation and air pollution public interest litigation, because pollutants are the same and are also strongly related to greenhouse gases. Furthermore, in view of the close relationship between greenhouse gas emissions and air pollution, they believe that through the practical experience and legal basis of air pollution public interest litigation, it can open up a potential exploration path for climate change litigation and provide new legal perspectives and solutions to the global climate change challenge[2]. In terms of the causal relationship between emission behavior and its consequences, the prevailing view among scholars is that the damage inflicted upon the environment or people as a result of climate change caused by carbon emissions does not stem from a direct causal link. Rather, it is perceived as a complex chain of causation involving multiple indirect factors and interlinked components.[3]. This presents challenges in establishing causation, determining the extent of harm, and identifying appropriate remedies in environmental public interest litigation. It also complicates the assessment of damages resulting from climate change and attributing responsibility to specific emitting companies for such damages.e. In view of this problem, the academic community generally believes that the liability for ecological and environmental damage should focus on prevention and mitigation, rather than just filling the loss. And faced with the climate change, it is often difficult to cure the problem with a single compensation measure, and it is necessary to reduce the damage through comprehensive means.

Foreign literature related to this topic began in the 70s of the 20th century. Some scholars requiring the state to adopt more active climate policies, and government officials and legislators should also work together to protect the environment and resources on which citizens depend [4]; In the Urgenda case, where the final judgment was rendered at the end of 2019, the government's inaction or delay in failing to protect citizens in a timely manner. In addition, some American scholars argue that climate change directly or indirectly violates human rights, and that countries must refer to human rights standards when formulating climate change policies[5].

The above preliminary results provide a research basis and inspiration for the discussion of this topic. After the dual carbon goal was proposed, it has gradually become a new hot issue. However, there are still the following problems in the current research on this topic: First, the research on climate change litigation is relatively weak. Since the "dual carbon" goal has been proposed less than ten years ago, most of the academic circles have conducted research in the fields of securities, investment, agriculture, oil and gas, but less research in the field of law, which also reflects that China is relatively conservative in the construction of climate change litigation.

Secondly, there is a lack of effective alignment between the research conducted by domestic scholars on climate change litigation and international research. While there is existing literature on foreign cases, the quantity remains insufficient. The focus primarily revolves around the "Urgenda case" in the Netherlands.. Since climate governance is a global issue that requires international cooperation, and China has not yet promulgated a law specifically to deal with climate, the path of climate change litigation in common law countries has great inspiration for us. Thirdly, domestic scholars do not focus on local judicial practice, but mainly discuss the specific legal issues faced by foreign climate change litigation and the theories introduced, which has the defect of disconnection between theories and China's judicial practice.

Based on the above shortcomings, this study will integrate the first case of climate change litigation in China and related cases related to air pollution, and also discuss the "litigation of the century" in France, including not only China's judicial practice but also foreign countries. The case study of air

pollution is selected as the research object, and there are multiple factors to consider. The primary reason is that there is a scarcity of climate change litigation cases in China, and it is difficult to support a comprehensive and in-depth conclusion derivation with only one case, so it is necessary to use more abundant case resources to make up for this shortcoming. Second, there is still controversy in the academic community about whether there is a possibility of transformation between climate change litigation and air pollution public interest litigation, which highlights the importance of exploring the correlation between the two. In this context, as a relatively mature field with abundant cases, the judicial practice, theoretical framework and experience summary of air pollution environmental public interest litigation undoubtedly have valuable reference value and enlightenment significance for the research of climate change litigation. Through this perspective, we are expected to provide more solid theoretical support and practical guidance for the future development of climate change litigation.

2. THE CURRENT DILEMMA OF CLIMATE CHANGE LITIGATION

2.1. Causation is the Most Difficult to Determine among the Many Types of Tort Litigation

The determination of causation is one of the most controversial and critical issues in both civil law and common law climate change litigation. First, climate change is caused by the actions of multiple actors, not by a single or specific emission source, and even the world's largest emitters cannot be considered to be responsible for climate change by a single actor. Second, based on the mobility of gases and the uncertainty of climate change, it is inevitable that climate change cannot be determined by simple cause and effect, but by cause and effect. Moreover, the effects of climate change are long-term. These effects often take a long time to become apparent, sometimes decades or more, and are not as likely as a result of a company's illegal discharge upstream, resulting in downstream fisheries being damaged or destroying farmland shortly after the discharge. Therefore, it is difficult to determine the direct causal relationship between climate change and a particular event in a short period of time.

2.2. The Rules of Proof of Causation are not Clear

The burden of proof is often associated with the adverse consequences of unclear evidence, and which party is assigned will affect the plaintiff's enthusiasm to file a lawsuit. At present, there are two rules of proof in China. Article 67 of the Civil Procedure Law stipulates that parties have the responsibility to provide evidence for their own claims. Within the framework of the basic principles of the allocation of the burden of demonstration, the core essence that is usually followed is that whichever party makes a positive claim bears the corresponding burden of demonstration. Specifically, the relevant provisions of Article 1230 of the Civil Code clearly stipulate a special mechanism for reversing the burden of proof in the case of disputes caused by environmental pollution or ecological damage: in such cases, the actor not only needs to bear the burden of proof for the reasons for exemption or reduction of liability provided by law, but also needs to prove that there is no direct causal relationship between his act and the claimed damage. This provision not only reflects the principle of oblique protection of environmental protection in the law, but also further strengthens the burden of proof on the perpetrator in environmental damage cases, so as to ensure that victims can seek legal remedies more effectively. Then, in the trial of other cases related to environmental pollution, there are inconsistencies in the allocation of the responsibility to prove a fact or claim on the original defendant by different judges. In the case of China Biodiversity Conservation and Green Development Foundation v. Hubei Institute of Technology and Ningxia Shuitou Hongsibao Water Co., Ltd., the plaintiff submitted prima facie evidence but the defendant failed to provide evidence of the non-existence of causation, and the judge ruled that the plaintiff's claim was established. In the case of Source Lovers Environmental Research Institute v. Changyuan Tefa Technology Co., Ltd.,

the plaintiff lacked sufficient evidence to establish causality, yet the judge upheld the claim, reasoning that the defendant's evidence fell short of disproving the link between illegal air pollution and the damage[6]. These two specific cases highlight the differences and lack of uniform standards in the handling of the duty to substantiate evidence in environmental pollution cases in current judicial practice. More importantly, the current legal system has not yet made clear and specific provisions on the obligation to establish evidence in climate change litigation, thereby introducing a degree of intricacy and ambiguity into judicial proceedings.

2.3. The Scope of Liability for Climate Change Litigation is Unclear

First of all, the precautionary principle is applied to climate change litigation, which is a prior remedy, so it is uncertain whether actual damage will occur until the court makes a ruling, so the compensation method adopted by the court for the damage of the subject of illegal discharge and environmental pollution should be preventive and defensive, rather than just estimating the losses caused and compensating for the corresponding damages. Secondly, the main way to compensate for china's environmental degradation is to pay for it. Under Section 1235 of the Civil Code, in the event of a breach, the losses and fees that must be paid to the offender apply to five different types of compensation that provide a clear legal basis for determining the amount of compensation. However, the quantification of damages inflicted upon the environment by climate change often poses significant challenges in monetary terms, thereby conferring considerable discretion upon judges in their adjudication process. In the case of the China Biodiversity Conservation and Green Development Foundation and Zhejiang Taobao Network Co., Ltd. over air pollution liability, taking into account the wide range and severity of environmental pollution, the rarity of ecological resources in a specific area, and the technical challenges and resource consumption faced in the implementation of ecological environmental restoration, the judge ruled that the defendant should bear a total of RMB 3.5 million in compensation, aiming to make up for the costs of ecological environment restoration caused by environmental pollution. In the case of Zhengzhou Xinli Electric Power Co., Ltd. and Shandong Environmental Protection Foundation Air Pollution Liability Dispute, the judge determined that Xinli Company had compensated for the virtual treatment costs of excessive air pollutants in accordance with the Judicial Appraisal Opinion issued by the Judicial Appraisal Institute of Nanjing Institute of Environmental Sciences. It can be seen that the judge's evaluation criteria for the amount of compensation awarded to the defendant in air pollution litigation are inconsistent.

3. IMPROVE THE DESIGN OF CLIMATE CHANGE LITIGATION

3.1. Clarify the Way in Which the Subject of Illegal Emissions is Held Liable

At present, Article 179 of the Civil Code stipulates that there are 11 main ways to bear civil liability, and those suitable for climate change litigation are to stop the infringement, remove the obstruction, and eliminate the danger. The current warming range has not had a fundamental impact on the survival and development of human beings, and it is difficult to consider it through money, so pollutant emissions can be used as a unit of measurement, and one of the ways to offset pollutant emissions to achieve ecological restoration. In addition, in judicial practice, the subject of illegal emissions can be required to stop continuing to discharge or reduce emissions, and it can also be ordered to adopt new technologies, new equipment, new materials, and new methods to reduce carbon emissions [8]. In addition, in the practice of climate litigation in foreign countries, we can learn from the "lawsuit of the century" in France, where the court recognized that the government's inaction in inadequate climate policy caused the ecological damage, and finally the court awarded the defendant a symbolic amount of 1 euro in compensation. In accordance with the relevant provisions of the French Civil Code, the judge ordered the adoption of remedial measures, with monetary compensation as a last resort, which was applicable only if the repair was not possible or sufficient. From this point of view, France adheres to the precautionary principle in climate change litigation.

3.2. Confirmation of the Qualifications of the Subject of the Proceedings

The first is the determination of the identity of the plaintiff, and the academic community hopes to expand the scope and the number of eligible plaintiffs[9]. In the past few years, there has been some discussion about whether the Supreme People's Procuratorate (SPP) can also be a plaintiff in climate change lawsuits. At present, China has adopted a policy-driven judicial model, and there has not yet been a climate change lawsuit filed with the SPP as the plaintiff, and if it can be given the right to file a lawsuit, it will greatly promote the progress of climate change litigation. First, it can reduce the risk of abusive litigation by citizens. Citizens can trust it by prosecuting companies for excessive CO2 emissions, as the SPP is a public authority that will inevitably investigate and verify whether there has been a violation of the law before filing a lawsuit. Second, by supervising administrative organs, we will promote China to achieve the "double carbon" goal as soon as possible. In terms of responding to climate change, the administrative organs play a pivotal role in the main body of responsibility, through the layer-by-layer decomposition of task indicators, the formulation of administrative regulations; The SPP can supervise the inaction and indiscriminate actions of the administrative organs, and can also investigate whether the regulatory actions adopted by the administrative organs can effectively prevent climate change risks and meet the policy objectives proposed in the year. According to Article 58 of the Environmental Protection Law, environmental protection organizations can file lawsuits against acts that pollute the environment, which is an expanded interpretation of the plaintiff's subject qualification clause and is also a positive attitude of Chinese law towards environmental protection organizations' participation in public interest litigation [10].

The second is the identification of the accused. At present, there is no law on the identity of defendants in climate change lawsuits, but academics believe that enterprises, as entities with large carbon emissions, should be the main subject of liability, while consumers and smaller emitters cannot be defendants [11], because consumers use products in the way they are intended to be used, and use them within the range that can already be predetermined as emission results or damage results. In the case of Friends of Nature v. State Grid Gansu Branch, the court held that the plaintiff was an environmental protection organization that complied with the provisions of the law and that the defendant and the litigation claim were clear and could file a public interest lawsuit, so both parties had the qualifications to be the subject of the lawsuit, and the case finally proceeded to the substantive trial procedure. It can be concluded that the court only needs to clarify the identity of the defendant, and whether it is a specific emitter belongs to the part of the subsequent trial, and cannot rule and reject it because it is not qualified before the trial.

4. CONCLUSION

With its unique judicial charm and strong driving force, climate change litigation is gradually becoming an important utility for judiciary to advance global climate change governance. The case of Friends of Nature v. State Grid Gansu Branch for Wind and Solar Abandonment, as a narrow climate change lawsuit in China, has opened up an important new path for China's judicial practice, even if the case ended in mediation. Although China's climate change litigation has just started, and there are many difficulties such as proving a robust and logically sound causal link between the behavior of emission and the result of damage, as well as the rules of proof, and the unclear and single scope of liability, if the way of liability can be confirmed and the plaintiff's standing to sue can be clarified, it is hoped that we can seek climate change litigation suitable for China and promote the realization of the "dual carbon" goal through judicial practice.

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