

Research on the Ecologicalization of Environmental Judicature

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ABSTRACT

The change and innovation of environmental judicature are the response to the ecological crisis, and its essence is the ecological evolution of environmental judicature. The ecologicalization of environmental judicature refers to the combination of environmental judicature elements and ecological elements. It is the penetration and integration of ecological ethics, ecological principles, and ecological thinking in the entire environmental judicature system, presenting an open ecological evolution system of environmental judicature. Taking the ecologicalization of environmental judicature methodology as the theoretical basis, the renewal of judicial concepts, the transformation of judicial value orientation, and the extension and expansion of judicial functions as the core elements, people can lead the future development and evolution of environmental judicature.

Keywords: *Ecologicalization, Environmental litigation, Specialization.*

1. INTRODUCTION

In recent years, a series of great changes and innovations have taken place in the field of environmental judicature in China. From the establishment of the environmental protection court, to the development of environmental public interest litigation and ecological environmental damage compensation litigation, as well as the clear provisions of ecological tort in the "civil code", and then to the promotion of centralized jurisdiction and centralized trial, the reform of environmental judicature has achieved remarkable results. Practice is the pioneer of theory. The reform of environmental judicature is a response to the era of ecological crisis, and its essence is the ecological evolution of environmental judicature.

2. LITERATURE REVIEW

2.1 Analysis of the Ecologization Concept

"Ecologization" is a word coined by scholars in the former Soviet Union. [1] Based on this, jurists put forward the concept of ecologization of law, pointing out that the requirements of ecological protection should be embodied in the legal norms,

and the ecological principles should be infiltrated into the law. [2] With the coming of the era of ecological civilization in China, the concept of ecologization has been introduced into the field of law. Professor Jin Ruilin was the first one to introduce the concept of ecologization in China. However, the understanding of legal ecology is not the same in academic circles. Scholars put forward the understanding of legal ecology from different levels and perspectives, including legal content, ethical basis, legislative spirit, guiding ideology, idea, method and practice, as well as legal development trend. Scholars believe that it is not only necessary for environmental law to radiate and influence other departmental laws, but also to infiltrate the requirements of environmental protection into civil law, economic law, procedural law, criminal law and other departmental laws. [3] The ecologicalization of law should also be extended to the abstract level, proposing that the law should be based on ecological ethics. [1] The infiltration of ecological principles should be emphasized, and the ecological concept should be transformed from static content to dynamic content, covering the whole process from legislation to law implementation. Therefore, on the basis of the concept of ecologicalization of law, the academic

community has put forward the concepts and propositions of ecologicalization of department law, legal methodology and rule of law. [4]

2.2 Ecological Practice of Environmental Judicature

There is no doubt that the influence of ecologicalization in the legal field is all-round, from the static legal system to the dynamic legal operation. From the basic legal methodology to the abstract legal idea, they are all evolving and developing in the direction of ecology. Among them, the reform and innovation of the judicial system in recent years makes the judicial field, especially the environmental judicature, be in the forefront of ecological practice.

The difficulties faced by environmental judicature reflect the urgent needs of the real society. Environmental judicature responds to the needs of the real society with a series of major changes. Summarizing the reform process of environmental judicature in recent years, the reform and innovation measures are mainly reflected in the following two aspects.

One is the specialization of environmental judicature. Since the establishment of the environmental protection tribunal of Guiyang intermediate people's court and the environmental protection tribunal of Qingzhen people's court in November 2007, and the establishment of the environmental resources tribunal of the Supreme People's Court on July 3, 2014, China's environmental judicature has been developing continuously along the direction of specialization. Today, the construction of specialized judicial institutions has made remarkable achievements. The trial of environmental cases is gradually concentrated to specialized judicial institutions, and the specialized system of judicial institutions has basically formed. Local courts actively promote the construction of specialized institutions, build a "five-in-one" specialized system of environmental resources trial, including trial institutions, trial mechanism, trial philosophy, trial rules and trial team, and carry out professional trial, restorative justice and multi-form linkage at the same time. They have explored a set of trial systems and formed a series of theoretical research results, which has made contributions to the construction of the environmental resources trial system with Chinese characteristics and international influence. [5]

Second is the improvement and innovation of environmental litigation system. On the one hand, with the revision of the "civil procedure law", the "environmental protection law" and the "administrative procedure law", the environmental public interest litigation system has been established. It is clear that social organizations and procuratorial organs should file environmental public interest litigation. Although there are still many disputes and divergences on the nature, function and other basic theoretical issues of environmental public interest litigation, its practical exploration has achieved remarkable results. Not only the number of cases has gradually increased, but also the fundamental and significant change of the cause of action from "damage to people" to "damage to the environment" has been realized, which is the result of re-understanding environmental value. And the protection of the environmental elements and ecological environment has been realized through judicial practice. On the other hand, in order to make up for the lack of ecological environment damage relief system, China has created the ecological environment damage compensation system. One of the implementation principles of the system is to reflect the ecological function value of environmental resources. The starting point of the system is to provide legal relief for the damaged ecological environment itself, and the way of relief is to repair the damaged ecological environment.

To sum up, the reform and innovation of environmental judicature presents the following characteristics, such as extending from the traditional protection of personal and property interests to the protection of ecological environment itself. The trial of environmental cases breaks through the traditional judicial system and follows the ecological law, so as to solve the problem of ecological attribute and regional division of environmental cases, which is conducive to the jurisdiction court to judge the cases from the perspective of the overall protection of the ecosystem. Under the guidance of ecological principles, the way of responsibility bearing emphasizes the restoration of ecological system, maintains ecological order and ecological security, and pursues the harmony between human and nature. Therefore, the reform and innovation of environmental judicature is a response to the ecological crisis, and its essence is the ecological evolution of environmental judicature.

3. THE CONNOTATION OF ENVIRONMENTAL JUDICATURE ECOLOGICALIZATION

The environmental judicature ecologicalization is an abstract summary of the development direction and evolution trend of environmental judicature. The definition of the connotation of environmental judicature ecologicalization should be based on the concept of environmental judicature and the integration of various elements of the ecologicalization.

To understand the dynamic development of environmental judicature, it is suggested to consider the important elements of environmental judicature. Judicature is one of the important parts and forms of law enforcement, which takes judicial trial or litigation as the core. The primary element of environmental judicature is to take trial procedure as the clue, covering the environmental judicature process of case acceptance, trial, judgment and execution, as well as different types of environmental litigation understood from the static perspective. Secondly, the judicial trial should be based on the court. Judicial institutions, as tangible carriers, try environmental disputes and practice trial procedures, which are the pivot of environmental judicature and also constitute one of the dimensions of measuring environmental judicature. Finally, judicial trial cannot be separated from the guidance of methodology, which is the basic factor of environmental judicature. Therefore, summarizing the above important elements of environmental judicature, it can be seen that the environmental judicature ecologicalization refers to the ecologicalization of environment judicature system based on trial, court as the basis and methodology.

According to the above concept of ecologicalization, the ecological environment protection is the basis, emphasizing the infiltration of ecological principle and ecological thinking, pursuing ecological order and ecological security, and finally realizing the harmony between human and nature. In order to present the theoretical connotation of ecologicalization clearly, the ecological benefits are divided into three elements: interest identification, interest measurement and benefit realization. First, the recognition of ecological benefits is a basic theoretical problem. Ecological benefits are the non-material interests carried by the ecosystem, are objective, inherent attributes of the ecosystem, and ecological benefits are not unique to human beings. The recognition of

ecological benefits means that ecological value is taken into consideration by law. Secondly, when the ecological interests conflict with the economic interests, the interest balance mechanism that ensures ecological priority should be established under the guidance of ecological ethics. Finally, the realization of ecological interests must consciously accept the constraints of ecological laws, and promote ecological security by restoring and maintaining ecological order. This is the inevitable choice of respecting and conforming to nature.

Therefore, integrating the elements of environmental judicature and ecological elements, the connotation of environmental judicature ecologicalization can be defined as the combination of environmental judicature elements and ecological elements. It is the penetration and integration of ecological ethics, ecological principles and ecological thinking in the whole environmental judicature system, presenting an open evolution system of environmental judicature ecologicalization. That is to say, the ecologicalization of environmental judicature means that environmental cases with ecological interests as the core appeal should become an important foothold of environmental judicature, the identification and measurement of ecological interests should become the main line to promote the trial of cases, and the realization of ecological interests should become an important factor to consider responsibility. At the same time, when setting judicial organs, it is necessary to fully consider the overall needs of the ecosystem. The judges should meet the professional needs of environmental cases, and are fully aware of the penetration of ecological thinking into environmental judicial methodology.

4. THE IMPROVEMENT AND OVERALL PROMOTION OF ENVIRONMENTAL JUDICATURE ECOLOGICALIZATION

Ecologization of environmental judicature is not only an abstract overview and summary of a series of reform and innovation measures in the practice of environmental judicature in recent years, but also the development and evolution trend of environmental judicature in the future. Therefore, the reform of environmental judicature in China should be guided by ecologicalization to realize the overall construction and promotion of the reform and innovation of environmental judicature.

4.1 Holistic Construction

The holistic construction of environmental judiciary ecologicalization, first of all, must be the ecologicalization of environmental judiciary methodology, which is the logical premise and theoretical basis of the environmental judiciary ecologicalization. It is reflected in the penetration of ecological thinking into environmental judiciary methodology at the micro, meso and macro levels. At the same time, it is required to introduce ecological thinking into case adjudication, and the openness and adaptability of the judiciary system will be reflected. Finally, the expansion of ecological vision will be realized, that is, the judiciary vision is no longer limited to human society, but extended to the whole natural environment. Secondly, in order to realize the promotion of environmental judiciary ecologicalization, it is necessary to form an environmental judiciary ecologicalization system with the core elements of "the renewal of judiciary concept, the transformation of judiciary value orientation, and the extension and expansion of judiciary function". [6] The ecological concept is integrated into the judiciary process, and the ecological justice is the value orientation, and the ecological function of environmental justice is expanded. Finally, ecology belongs to natural science, and the infiltration of ecological principles and ideas into the field of law is reflected in a kind of interdisciplinary thinking modes. Therefore, the environmental judiciary ecologicalization integrates the natural law and social law, and also integrates human and nature.

4.2 Perfecting the Path

On the one hand, it is to promote the improvement of environmental litigation system, from traditional environmental disputes and litigation to environmental protection and litigation, and further to ecological interests and litigation. Based on ecological principles and ecological concepts, it is divided into preventive environmental litigation and restorative environmental litigation, so as to distinguish from traditional litigation. Also, it helps to promote the classification of environmental cases from the perspective of functionalism, and further promote the standardization of environmental trial functions.

On the other hand, it is to promote the deepening and expansion of the specialization of environmental judiciary and establish the environmental court. Environmental court is not

only the highest form of specialized judiciary institutions, but also the key to realize the role transformation of judiciary institutions. The primary goal of environmental court is to improve the efficiency and professionalism of environmental dispute handling. The secondary goal is to provide effective mechanism for solving environmental problems and dealing with environmental disputes. The ultimate goal should be to protect the ecological environment and make contribution to the harmony between human and nature. Therefore, compared with the traditional court, the environmental court must surpass the function of dispute resolution and assume the function of ecological environment protection, which is reflected in the combination of judiciary and administrative functions.

5. CONCLUSION

With the emergence of global ecological crisis and the rise of environmental law, human vision has shifted from human society to the living background of nature. The naturalness of human determines the intimate state between human and nature. Human and nature are not antagonistic, but co-exist as a whole. [7] This constitutes the internal basis of ecologicalization and the era background of environmental judiciary. That is to say, the ecological evolution of environmental judiciary is the response of environmental judiciary to ecological crisis.

AUTHORS' CONTRIBUTIONS

This paper is independently completed by Hongmei Zhang.

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