

Study on the Application of the Green Principle in the General Provisions of the Civil Law

From the Perspective of Sustainable Development Strategy of Energy Resource

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Abstract—The green principle established by the General Principles of Civil Law is highly compatible with the strategic action plan for energy conservation and environmental protection established by China's energy development strategy. However, the research results combining the two have not yet emerged in academic circle. Based on the establishment of the green principle, this paper analyzes the relationship between the green principle and the energy development strategy and the role of the green principle in the energy development strategy and explores the application of the green principle from the perspective of the realization of the energy development strategy, hoping to start the discussion on the future research of relevant issues.

Keywords—green principles; energy development strategies; relationship, function and application

I. INTRODUCTION

In today's world, energy and environment have become crucial factors for the sustainable development of a country's economy, so saving energy and protecting the environment have become the common needs of all countries in the world. In June 2014, the General Office of the State Council issued the "Energy Development Strategic Action Plan (2014-2020)", proposing four strategies of conservation priorities, basing on domestic market, green and low-carbon, and innovation-driven, which is of great strategic significance in alleviating the status quo of energy shortage in China as the country with the largest population, protecting the ecological environment and promoting sustainable economic and social development. Article 9 of the General Provisions of the Civil Law of the People's Republic of China passed by the National People's Congress in March 2017 stipulates: "the civil activities that civil subjects are engaged in shall be conducive to saving resources and protecting the ecological environment."¹ The scholars call it the green principle, and its status is equal to that of the principle of equality, the principle of fairness, the principle of voluntariness, the principle of good faith, and the principle of public order and good social customs of the traditional civil law as the basic principles of civil law. The basic principle of civil law is the

guiding ideology of the entire civil law and the overall norms that commands civil law. Although they are not specific behavioral norms, they are super-standards that embody the basic principles and basic norms of civil law behind all systems, which must be reflected in the application in specific systems and judicial practice.

The resources conservation and environmental protection proposed by the green principles and the energy-saving strategy proposed by the Energy Development Strategy can be said to be highly compatible and reflect the needs of the times in today's society. The "Energy Development Strategy" is based on the macro level and the national level, and promotes the realization of the strategy through various policy systems. The green principle, based on micro-levels, is a specific requirement for the behavior of each civil subject involved in the market. The two achieve the sustainable national strategy from the macro and micro dimensions. So can the two parts work together? Is there a correlation between green principles and energy development strategies? Can the application of the green principle promote the realization of the energy strategy? At present, there is no research in the academic world combining the two to carry out research. This paper explores the application of the green principle from the perspective of the relationship between the green principle and the energy development strategy and the role of the green principle in the realization of the energy development strategy, with a view to helping the civil law in the implementation of the green principles in the future.

II. THE ESTABLISHMENT AND SIGNIFICANCE OF THE GREEN PRINCIPLE IN THE GENERAL PROVISIONS OF THE CIVIL LAW

A. Establishment of the Green Principle

Social development is changing with each passing day, but the problems of resource shortage and environmental pollution that accompany it cannot be ignored. The rapid development of the economy and society at the expense of environmental resources is an issue that cannot be avoided by developing countries. Although China is a big resource country with vast land and abundant resources, it is also a

¹ General Provisions of the Civil Law of the People's Republic of China

country with large population and the per capita resource possession is not optimistic. Because the awareness of saving resources of Chinese people is weak, the shortage of resources has become an urgent problem to be solved. On the other hand, the number of cases of environmental crimes and environmental public interest litigation has increased dramatically. According to the work report of the Supreme People's Court, the people's courts at all levels in China tried 19,000 criminal cases involving polluting environment and resource destruction in 2015, an increase of 18.8% year-on-year; the total number of crimes involving environmental crimes in the first instance judgment of the year was 1,322, and courts at all levels concluded 78,000 civil cases involving environmental protection. In 2016, the national court accepted 20,394 criminal cases of various environmental resources, and received 2,072 environmental pollution crime cases. The national courts accepted a total of 90,769 civil cases involving various environmental resources. The above three groups of data increased by 7%, 56% and 16% respectively. In 2015, the Supreme People's Court issued the "Judicial Interpretation of Environmental Infringement Cases and the Implementation Measures of the Trial of Public Interest Litigation Cases by Procuratorial Organs". 2015 was called the first year of environmental public interest litigation in China. Environmental protection organizations and procuratorates filed 44 environmental public welfare litigation cases as plaintiffs. In 2016, courts at all levels across the country accepted 189 first-instance cases of environmental public interest litigation initiated by social organizations and pilot procuratorial organs, an increase of 32.9% year-on-year. It can be seen that with the outstanding resource and environmental issues, it is obviously not enough to restrict people's behavior by criminal law and environmental protection law alone. Therefore, at the beginning of the formulation of the Civil Code, scholars have called for the inclusion of green principles in order to clarify people's obligations, promote people to recognize the importance of resource conservation and environmental protection, and raise people's awareness of resource conservation and environmental protection.

The General Provisions of the Civil Law of the People's Republic of China (hereinafter referred to as the "General Provisions of the Civil Law") was successfully passed on March 4, 2017 after four deliberations. Article 9 of the General Provisions of the Civil Law stipulates: "the civil activities that civil subjects are engaged in shall be conducive to saving resources and protecting the ecological environment."² (hereinafter referred to as "green principle"). This will not only help solve the problem of China's increasingly serious resource shortage and environmental pollution, but also respond to the appeal of the broad masses of the people.

² General Provisions of the Civil Law of the People's Republic of China

B. The Significance of Establishing the Green Principle

1) Inheriting the traditional culture of harmony between man and nature and highlighting the spirit of the time of sustainable development: The green principle is the product of China's excellent traditional culture adapting to the development of contemporary economy and society. In expounding the relationship between ecology and civilization, General Secretary Xi Jinping pointed out: "Ecological prosperity is civilized prosperity, and ecological decline is civilized decline." China's 5,000 years historic culture contains profound green concepts, emphasizing "unity of heaven and man". People should respect and protect nature on the basis of understanding nature, and should live in harmony with nature and live together for symbiosis.

The economic movement that regards the modern economy as supreme and ignores the natural values and ecological laws has spawned a series of environmental problems, resulting in an ecological crisis, which has forced humans to re-examine the relationship between man and nature. The Environmental Protection Law revised in 2014 transformed: "Environment should be coordinated with development" to "Development should be coordinated with environmental protection"; and adjust the "treatment after pollution" model to "prevention first, and promoting multi-governance" mode. The 2014 Energy Development Action Plan proposes to "promote the green development of energy" and "to adhere to the strategic policy of "saving, clean and safe".³ The five-in-one general layout proposed in the report of the 18th National Congress incorporates the construction of ecological civilization, depicts the grand blueprint for the construction of ecological civilization from ten aspects, and proposes four strategic tasks of excellence, conservation, protection and construction. We should strive to build a beautiful China and realize the sustainable development of the Chinese nation. From this we can see the country's firm determination to strengthen the rule of law in environmental protection, promote the green development of energy, and vigorously enhance the construction of ecological civilization. Green development has become the main theme of today's economic and social development, showing the spirit of the times and the value orientation in modern society. The "General Provisions of the Civil Law" integrates the concept of green development, and guides civil subjects through civil norms to actively carry out civil activities under the premise of following the green principle, which demonstrates the spirit of the era of sustainable development.

2) Making up for the limitations of public law governance and strengthening the protection of public environmental security by private law: Traditional legal theory often uses public law to reconcile the contradictory relationship between people and resources. Therefore, China has relied on the Environmental Protection Law and the Criminal Law for a long time to regulate the relationship between people and nature, and people and resources.

³ Notice of the General Office of the State Council on Printing and Distributing the Strategic Plan for Energy Development (2014-2020).

Although the "Environmental Protection Law" protects the interests of the social public environment, it also protects the personal and property legitimate rights and interests of civil subject, but solving environmental problems merely through the administrative law and other public law has its own insurmountable limitations. First of all, public law does not focus on the interests of individuals, but emphasizes the connection between environmental protection and social interests, thus leading to a lack of corresponding enthusiasm for rights subjects. Second, the provisions of public law are generally mandatory, and mostly rely on the enforcement of administrative agencies. The administrative agency may neglect the protection of the ecological environment in pursuit of GDP and short-term economic benefits, and ignore or even condone the environmental pollution behavior of enterprises. In addition, the important institutional theory of the Environmental Protection Law is rooted in civil law. If there is no legal norm in the civil law regarding personal life and health and property damage caused by environmental pollution and ecological damage, the legal responsibility of the polluter cannot be effectively investigated only by the provisions of the Environmental Protection Law, and the victims also can't obtain adequate compensation, which has caused great difficulties for the judiciary in hearing cases.

In the process of environmental governance, people gradually find that market mechanisms of economic policy can often solve environmental problems more reasonably.⁴ Using private law to regulate the relationship between people and resources can play a more advantageous role than public law to a certain extent. Therefore, some scholars advocate that the privatization of environmental rights is a trend.⁵ The civil law is the important institutional source and theoretical source of environmental law. It can make up for the shortcomings of public law governance through private law means such as market mechanism and rights restriction, and broaden the concepts, methods and approaches of environmental governance. The Green Principles set up an interface in the civil code system to establish pipelines and bridges to environmental law. The establishment of the Green Principles will enable the public to conduct more active rights protection campaigns in order to protect their environmental rights. At the same time, the protection path of private law can clarify rights, obligations and responsibilities more clearly, thus forming a complete logical system, so that environmental awareness can penetrate into the behaviors and concepts of every civil subject.

III. THE RELATIONSHIP AND ROLE OF GREEN PRINCIPLES AND ENERGY DEVELOPMENT STRATEGIES

A. *The Background and Main Contents of the Action Plan of Energy Development Strategy*

At present, China has formed an energy supply system for the comprehensive development of electricity, coal, oil, natural gas, renewable energy and new energy and has become the world's largest energy producer and energy consumer, which basically meets the needs of social and economic development. However, whether it is energy production or energy consumption, China faces serious challenges. Problems such as high energy demand pressure, high energy supply constraints, low energy technology, and ecological and environmental damage caused by energy production and consumption still exist. In 2014, President Xi Jinping established the "four revolutions" and "one cooperation" national policy for energy development at the sixth meeting of the Central Financial and Economic Leading Group; Premier Li Keqiang presided over the study and discussion of the "The Action Plan of Energy Development Strategy (2014-2020)" (hereinafter referred to as the Action Plan) at the first meeting of the National Energy Commission and clarified the strategic objectives of China's energy development. The spirit of these two meetings was reflected in the Action Plan issued by the State Council. The Action Plan proposes to adhere to the strategic policy of "conservation, clean and safe" and accelerate the construction of a clean, efficient, safe and sustainable modern energy system. We should focus on the implementation of "strategy of conservation priority", "strategy of based on domestic market", "green and low carbon strategy", and "innovation drive strategy". Among them, conservation priority is the eternal theme of energy development. Making the conservation priority throughout the entire process of economic society and energy development means not only achieving energy efficiency increasing in energy supply and consumption, but also focusing on energy conservation achieved by adjusting and optimizing the economic structure. This is systemic energy conservation, which is also an important direction for China to further excavate energy-saving potential on the basis of continuing to adhere to technology energy conservation and management energy conservation. The Action Plan proposes that by 2020, the total primary energy consumption will be controlled at around 4.8 billion tons of standard coal, and the total coal consumption will be controlled at around 4.2 billion tons. Green and low carbon is an inevitable choice for China to actively respond to climate change. The Action Plan, based on China's coal-based energy structure, insists on the development of clean and efficient use of non-fossil energy and fossil energy, gradually eliminates fossil fuel subsidies, supports renewable energy and clean energy, and clearly proposes the energy structure adjustment path of "one reduce and three lift" to address the challenges of climate change. By 2020, non-fossil energy will account for 15% of primary energy consumption, natural gas will account for more than 10%, and coal consumption ratio will be controlled within 62%. By 2030, non-fossil energy will account for about 20% of primary energy consumption.

⁴ Cai Shouqiu. *Environment and Resources Law*, Wuhan University Press, 2000, p. 106.

⁵ Lv Zhongmei. *New Vision of Environmental Law*, China University of Political Science and Law Press, 2000, p. 132.

B. *The Relationship Between Green Principles and Energy Development Strategies*

1) *Green principles and energy development strategies reflect the concept of sustainable development:* Marx emphasized that the economic base determines the superstructure, and the social ideology based on a certain economic foundation and the superstructures of the corresponding political and legal system, the organization and facilities reflect the economic base. Both the legal point of view and the legal system are important superstructures of modern society, which reflect the status and value objectives of the social and economic development. Judging from the historical development of civil law, the content of civil law in every country has always been adapted to the social and economic development of the time. For example, the French Civil Code and the German Civil Code reflect the social living conditions of the capitalist market economy; China's civil code also conforms to the inherent requirements of the socialist market economy and implements the current and future development concepts of social life in China. . At the same time, as an important part of the superstructure, the Action Plan reflects the current situation of China's energy development as well as the development direction of China's energy future: promoting the green development of energy. This is in line with the value concept of China's sustainable economic development, and is similar to the green principle proposed by the General Provisions of the Civil Law.

2) *The green principle regulates equal civil subjects, and the energy development strategy regulates the whole society:* Civil law is the general term for the legal norms that stipulate and adjust the personal relationship between the equal subjects, which is based on the principle of equality and the principle of autonomy of will. As one of the principles put forward by the General Principles of Civil Law, the Green Principle emphasizes: "the civil activities that civil subjects are engaged in shall be conducive to saving resources and protecting the ecological environment."⁶ It can be seen that the green principle can only make specifications and the disposition of right and duty between equal civil subjects, and must not exceed the adjustment methods and scope of private law. The energy development strategy is the overall strategy of national energy development. Its main tasks are "enhancing energy self-supporting capability", "promoting energy consumption revolution", "optimizing energy structure", "expanding energy international cooperation", and "promoting energy technology innovation". Achieving the goals and tasks of the Action Plan requires the efforts of the state, government, enterprises, and individuals. "We need to improve the energy reserve system and establish a combination of state and enterprise reserves." "We should also carry out national

energy conservation actions, implement the national energy conservation action plan, strengthen publicity and education, popularize energy-saving knowledge, promote new energy-saving technologies and new products, vigorously promote green lifestyles, guide residents to use energy scientifically and rationally and make conservation energy become the conscious action of the whole society."⁷ It shows that the Action Plan provides direction of energy development and utilization for the entire society, including the government, enterprises, and individuals, which is not limited to the guidance of equal subjects.

3) *Green Principles regulate all civil activities, and energy development strategies guide energy implementation activities:* The green principle broadly refers that all activities and behaviors that people carry on in production and life must be coordinated with the environment and resources. The essence is that people and the environment live in harmony. The Green Principles regulate all civil activities and behaviors. The "Action Guide" is formulated for the statement: "to implement the spirit of the 18th Party Congress, promote the energy production and consumption revolution, and build an upgraded version of China's energy, we must strengthen the overall plan and clarify the overall strategy and action plan for China's energy development in the coming period to promote the innovative development, safety development, and scientific development of energy"⁸. Its purpose is to guide all energy implementation activities in China, instead of all civil activities.

C. *The Role of Green Principles in the Implementation of Energy Development Strategies*

1) *The green principle is conducive to giving play to the role of citizens in the implementation of energy strategy:* The Action Plan emphasizes that "we should implement the National Energy Conservation Action Plan, strengthen publicity and education, popularize energy-saving knowledge, promote new energy-saving technologies and new products, vigorously promote green lifestyles, guide residents to use energy scientifically and rationally, and make conservation energy become the conscious action of the whole society." The formulation of the green principle establishes the obligation of citizens to save resources and protect the environment. It provides a theoretical basis from the legal level, makes up for the legal defects of resource conservation obligations, and guarantees the implementation of environmental protection obligations. Under the constraint of green principle, citizens must protect the environment when implementing civil activities. Individuals must not exercise their rights in a way that undermines the public interest. This is conducive to the implementation of

⁶ General Provisions of the Civil Law of the People's Republic of China

⁷ Notice of the General Office of the State Council on Printing and Distributing the Strategic Plan for Energy Development (2014-2020)

⁸ Notice of the General Office of the State Council on Printing and Distributing the Strategic Plan for Energy Development (2014-2020)

the National Action Plan for Energy Conservation advocated by the Action Plan.

2) *The green principle is conducive to standardizing the behavior of enterprises in the implementation of energy strategy:* The Action Plan requires that relevant departments of the State Council, provinces (autonomous regions, municipalities) and key energy enterprises shall implement this action plan into the important agenda of the department, the region, and the enterprise, and make the convergence between various plans and the action plan. "The green principle imposes the obligation of environmental protection on the behaviors of civil subjects, so any civil subject who violates this obligation must take legal responsibility. Energy companies must implement the energy-saving strategy of "saving, clean, and safe" in their production activities. They cannot obtain economic benefits at the expense of environmental pollution, or they will take corresponding legal responsibilities.

IV. THE APPLICATION OF THE GREEN PRINCIPLE

The application of the green principle has narrow sense and broad sense in concept. The application in the broad sense includes the implementation of the green principle in the legislation of legislative body, civil subjects' automatic compliance with the green principle in the social life, and the application of the judiciary in the civil case. Therefore, the application in a broad sense can be divided into legislation application, the behavior application and the judgment application. Limited to the space, the author only discuss from a narrow perspective, namely judgment application in this article.

A. *The Green Principle Should Be Justiciable*

First of all, judging from jurisprudence, the key to whether a certain legal principle is justiciable lies in whether it can be transformed into a premise with operability that subsume the case facts through legal interpretation and legal argumentation. If an abstract fuzzy legal principle can be turned relatively specific and decided, the legal principle is justiciable; otherwise, it is not justiciable. Moreover, we should presume that the legal principle is justiciable. That is to say, it can be presupposed that it can be directly applied before it is confirmed to be justiciable. If we directly asserted that a certain legal principle is always not judicable in theory, the legal principle does need to exist. It can be seen that the green principle, as one of the basic principles of civil law, is also justiciable in the perspective of jurisprudence.

In addition, from the perspective of civil judicial practice, there have been many cases in China taking the basic principles of civil law as the basis for direct judgment. For example, the "Luzhou Legacy Case" takes the principle of public order and good customs as the direct judicial basis; the "case that three accusers indict a fast food restaurant in Chengdu" takes the principle of equality as the direct judicial basis; the "dispute case that Winery of Shandong County indict the anti-illegitimate competition of Wendeng Brewery" takes the principle of honesty and credibility as the direct judicial basis. It can be seen that judicial practice has

recognized and tested the justifiability of the basic principles of traditional civil law. In view of the close relationship and greater similarity between the green principle and the principle of public order and good customs, and the clearer and more explicit expression of the green principle, a bridge is directly established between civil activities and environmental protection. Therefore, the green principle should also be justiciable in civil justice practice. If the basic principles of civil law need to be applied to achieve the purpose of resource conservation and environmental protection, the judge should directly quote the green principle, and no longer need to consider the principle of public order.

Based on this, if enterprises and individuals pollute the environment and fail to protect the ecological environment in the process of implementing energy strategy, the judge can choose to apply the green principle to require them to assume legal responsibility.

B. *Rules for Judicial Application of the Green Principles*

On the one hand, under the guidance of the basic principles of civil law, the codes of conduct and standards that are formulated or recognized by the state about what people can and cannot do are legal rules. Legal rules are specific responses to legal principles. Therefore, in a broad sense, the judicial application of legal rules is also an indirect application of legal principles. Legislation can reflect social reality and solve social problems in a certain period of time. Under the guidance of the green principle, a series of specific rules and corresponding operational mechanisms for resource conservation and environmental protection will be introduced. In judicial practice, judges should understand the spirit of green principles, grasp the value orientation of green principles, and apply specific rules to handle cases.

On the other hand, because the application of legal principles is to some extent to repair legal loopholes, which makes up for legal blind spot. The application of a basic legal principle is subject to order restrictions, purpose restrictions and reasoning restrictions. First, legal principles are subject to order restrictions when applied, i.e., legal principles must exhaust legal rules before applied. In order to limit the judge's discretion and ensure the uniformity and stability of the judgment, when there are legal rules, the legal rules are given priority. Only the legal rules do not exist, the legal rules conflict with the legal principles or the results of the legal rules are seriously violated to fairness and justice, the principle of law is applied. Therefore, if there are specific legal rules in the Civil Code that can achieve the goal of resource conservation and environmental protection, the green principle should not be directly applied, while the legal rules should be applied first. Of course, judges can also use the green principle as a supplementary basis to enhance the persuasiveness of the judgment. If there is no specific legal rule, the judge may choose to apply the green principle to make up for loopholes in the law. Second, the legal principle must be limited by purpose when it is applied, which means the application of legal principles should achieve the justice of individual case. Judges can make judgments based on legal principles when faced with cases where the law is not

applicable. However, the judgment must be made in accordance with the requirements of justice and must not be in violation of the fairness of the case. Natural resources, as a kind of public interest, are more related to the society than private interests. Therefore, the green principle must be limited by purpose when applicable. According to the green principle, the judge must meet the fair request for a judgment in a certain case and convince the parties. Third, it should be limited by reasoning in application, which means there must be strong reasons for the application of legal principles. The application of the basic principles of law is to some extent related to the value judgment of judges and the use of their discretion. The judge's value judgment must have public persuasion and legal authority. The application of the green principle involves the public interest, and the discretion of the judge is subject to regulation. Therefore, judges must make accurate value judgments when applying the green principle, and fully and strongly explain the reasons for applying the green principle in the judgment.

C. Consequences of Violation of Green Principles

The green principle is one of the principles in the civil law. Although it is not the basic principle of traditional civil law such as the principle of voluntariness, equity principle, principle of honesty and credibility, and the principle of public order and good customs, it is still a social norm established by the state in the form of legislation, which has coerciveness, so violating this legal obligation, people must assume legal responsibility according to the actual situation and accept the investigation of law enforcement and judicial process.

The consequences of violating the compulsory norms include the form of effect such as the pending validity, revocable and invalidation, and the forms of responsibility such as stopping the infringement, removing the obstruction, eliminating the danger, restoring the original condition, and compensating for the loss. In the form of effect, "invalid" is undoubtedly the most unfavorable one for the parties. Therefore, invalidation should be considered as the last resort to solve the problem of legal validity. When a civil subject violates the green principle, the judge should not always determine that it is invalid, but should adopt a flexible approach and conduct specific analysis and processing according to the specific case. If the subjective fault of the civil subject is serious and the objective behavior has a very adverse effect on the environment, the act is considered to be invalid; if the subjective fault of the civil subject is not serious or the objective behavior has not reached a very unfavorable degree, it should not be considered invalid, and can be remedied by the form of responsibility such as stopping the infringement, restitution, and compensating for the loss. The judge can handle cases flexibly according to specific situations, which is conducive to the combination of encouraging transactions and protecting the environment, avoiding the production and transaction costs that the parties have already invested in come to nothing, and avoiding the waste of social resources. This is also in line with the proper meaning of "resources conservation" in the green principle.

V. CONCLUSION

As the basic principle of civil law, the green principle is the basic requirement for each subject involved in civil activities, and it runs through civil legislation and the judiciary. As a macro-strategy determined by the state to achieve the goals of energy conservation, environmental protection, and sustainable development of energy and economy and society, energy development strategy can't be implemented only based on state administrative enforcement. Effective implementation requires the active participation of each microcosmic body involving in energy activity. China's 1.4 billion citizens and thousands of legal persons, unincorporated organizations, and even foreign citizens and stateless persons included in China are civil subjects, so it is inevitable for them to participate in various civil activities. Implementing the green principle in civil activities is highly compatible with the spirit and goals of the energy sustainable development strategy. Through the conscious behavior of each civil subject, the national energy development strategy can be more effectively implemented and realized.

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