

Chinese Experience in Judicial Countermeasure to Climate Change

Ladies and gentlemen,

It's my great honor to be invited to attend the third "Law, Judicial Agencies and Climate Change" International Seminar for environmental judges of the Asia-Pacific region held by the Asian Development Bank.

China has always been an active participant in the countermeasure to climate change and successively established national coordination agencies for climate change, participated in international negotiations related to climate change, made the "Independent Contribution Promise" and issued a series of specific policy measures to slow down the emission of greenhouse gas. The legislative authority of China officially ratified the Paris Agreement in April, 2016 and promulgated the Thirteenth Five-Year Plan, in which climate and environment goals were regulated in detail so as to complete the improvement system for climate change.

As one necessary link in China's improvement system for climate change, judicature plays a more and more important role in the countermeasure to climate change. In recent years, China's courts have taken a large number of effective measures from the aspects of strengthening adjudication authorities, hearing cases under law, advancing public-interest litigations and improving the work system of adjudication. And next I will share it with you.

Chapter One Strengthening the construction of specialized adjudication institution.

Environment and resources adjudication has always been an important part of Chinese courts' adjudication work and according to traditional division, criminal, civil and administrative tribunals set up in every court are respectively in charge of the adjudication of criminal, civil and administrative cases related to environment and resources. In November,2007, the people's court of Qingzhen, within the jurisdiction of the capital of Guizhou Province in southwest China, Guiyang, established the first ecological tribunal of China. The Supreme People's Court founded the Environment and Resources Adjudication Tribunal in June, 2014, which is for the adjudication and guidance of cases related to environment and resources , and cases related to climate change were also brought into the scope of specialized research and adjudication. There are in total 558 specialized environment and resources adjudication institutions in China, including environment and resources adjudication tribunals, collegial panels and circuit courts, established in people's courts in 27 provinces, ,which lay the foundation for boosting the specialization of environmental judicature.

Chapter Two Hearing lawsuits related to climate change under law.

The Supreme People's Court issued this June *The Opinion on Giving Full Play to the Functional Role of Adjudication and Providing Judicial Service and Protection for the Construction of Ecological Civilization and for Green Development*, and in this judicial policy document, the Supreme People's Court put forward that we should actively explore judicial countermeasure to climate change, hear under law cases related to carbon emission, energy conservation, green finance and biodiversity, and advance the construction and improvement of national system for climate change improvement. Judicial countermeasure to climate change has been one important part of Chinese environmental judicature.

Chapter Three Promoting actively Environment-related Public-interest Litigation.

Environment-related public-interest litigation was a new litigation system set up in the Civil Procedural Law amended in 2012. And the new Environmental Protection Law took effective in January of 2015 specifies the qualifications for social organizations to file environment-related public-interest litigations. For the above laws' effective implementation in the adjudication of cases related to environment and resources and for the unification of referee scale, the Supreme People's Court promulgated the *Interpretation on Several Issues Concerning Law Application in the Adjudication of Environment-related Civil Public-interest Litigation*

Cases in January, 2015. Besides, the procuratorates in 13 pilot regions can file environment-related civil and administrative public-interest litigations caused by environmental pollution or ecological damage. According to statistics, from the implementation of the judicial interpretation in January 2015 till now, courts all over the country accepted 98 environment-related civil public-interest litigation cases filed by social organizations, of which 51 were concluded; And from the pilot work for the procuratorates to file public-interest litigations, courts all over the country accepted 25 environment-related public-interest litigation cases filed by the procuratorates.

The *Interpretation on Several Issues Concerning Law Application in the Adjudication of Environment-related Civil Public-interest Litigation Cases* stipulated a series of systems encouraging social organizations to file environment-related civil public-interest litigations, including the open up for the types of social organizations and the burden reduction of litigation cost. I will choose some of the important systems to make an introduction:

1. There are two types of cases that can be filed environment-related public-interest litigations stipulated in this Interpretation, namely, when damages have been caused and that is, environment has suffered damages, and when the behavior of a polluter has significant risk of harm to environment. Especially for “significant risk of harm”, I think it is

possible to be the extended space for Chinese courts to accept and adjudicate relevant cases related to climate change in the next step.

2. As for preservative measures, according to Chinese laws, courts can take certain preservative measures on the behavior and property of polluters. In the process of adjudicating environment-related cases, courts, according to the application of parties, can apply properly under law measures before or in the adjudication, such as forbidding enterprises continuing emission, stopping production, stopping construction and reducing the pollution emission to the stipulated standards. These behavior preservative measures have been applied in the adjudication practice of litigations related to climate change such as air pollution.

3. As for the forms of undertaking liabilities, the Interpretation brought the harm to environmental public-interest into the scope of damage in traditional Tort Law. Courts can, according to the application of the plaintiff, adjudge that the defendant restore the damaged environment and compensate for the interim loss. What's more, courts can also adjudge that the defendant should apology to the public through influential media. These forms of undertaking liabilities have been applied in the adjudication practice of climate change litigations such as air pollution.

4. Giving full play to the function of technical experts. Parties can employ technical experts themselves, and courts can also employ

technical experts ex officio to give advice on special issues such as the determination of causality, the cost for repairing environment and the scheme for repairing.

Chapter Four Exploring the improvement for adjudication mechanism.

We should explore the way of establishing the jurisdiction system of environment and resources cases which is properly separate from administrative division, gradually change the present jurisdiction system based on administrative division and set up trans-division specialized adjudication institutions related to environment and resources by ecological system or ecological functional zone such as drainage basin. Take the people's courts of Guizhou Province as an example. Guizhou was divided into four ecological judicial protection units based on drainage basin and ecological zone, and these four units are under the jurisdiction of 5 grassroots courts, 4 intermediate courts and one environmental protection adjudication tribunal of the high people's court.

We should also explore the way of establishing the coordinated interaction mechanism of environmental judicature and environmental administrative enforcement, and to link up the two especially in the aspects of collection and fixation of evidence and the supervision and enforcement of judgment, so as to jointly promote the comprehensive treatment of environment. And we should improve ADR mechanism.

When we strengthen the environment and resources adjudication, we, at the same time, should promote the improvement of ADR mechanism such as mediation and arbitration to make litigation and ADR mechanisms link, coordinate with and complement each other and provide multiple options for the settlement of disputes related to environment and resources.

That's all. Thanks for your attention!