

Thoughts on Promoting the Construction of Legal Security System for Ecological Civilization Construction

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Abstract: Ecological civilization can not only be the sum of positive achievements made by human beings in dealing with the relationship between man and nature, but also be a higher social form. The realization of ecological civilization construction needs not only the renewal of corresponding ideas and value pursuit, but also perfect legal guarantee. In terms of legal framework system, a complete system should be established with the Basic Law of Ecological Civilization Construction or the Basic Law of Environmental Protection as the leading factor and pollution prevention, resource protection, ecological protection, resource and energy conservation laws as branches. The basic principles of ecological priority, no deterioration, ecological democracy and joint responsibility should be implemented in all legislation, and a perfect legal guarantee system for ecological civilization construction should be established from three dimensions of prevention, control and relief.

1. The Construction of Ecological Civilization Needs the Guarantee of the Legal System

1.1. The Concept of Ecological Civilization and Ecological Civilization Construction

Although the concept of ecological civilization is expressed differently, the most basic concept should be "respecting nature, adapting to nature and protecting nature". This basic idea is further manifested as follows: in the relationship between man and nature, it emphasizes isomorphism and respects and agrees with the inherent value of nature; In the relationship between the various components of the ecosystem, emphasize integrity, respect and protect the integrity and good state of the entire ecosystem; In the ecological relationship between generations, emphasize sustainability and respect and protect the ecological interests of future generations; On the establishment of legal system, we should emphasize the constraint of laws, and establish the legislation of environmental resources on the basis of conforming to the basic ecological laws, the overall evolution laws of environmental elements and the laws of social development. Emphasize integrity, respect and protect the integrity and good state of the whole ecosystem; In the ecological relationship between generations, emphasize sustainability and respect and protect the ecological interests of future generations; On the establishment of legal system, we should emphasize the constraint of laws, and establish the legislation of environmental resources on the basis of conforming to the basic ecological laws, the overall evolution laws of environmental elements and the laws of social development.

In fact, the construction of ecological civilization is the process of implementing the basic concept of ecological civilization. The foothold of ecological civilization lies in the relationship between man and nature (or ecological environment), with which ethical values such as advocating and attaching importance to the isomorphism, integrity and intergenerational fairness of ecological system are formed. The construction of ecological civilization should be guided by these concepts, focusing on the following aspects: First, ecological civilization should be placed in the dominant

position of civilization construction, taking ecological civilization construction as the fundamental purpose and starting point of economic, political, cultural and social construction, and the effect of civilization construction in other fields should be promoted or not. Second, we must make economic and social development endogenous to ecological civilization and promote economic and social development by pursuing ecological civilization; The third is to build a legal system of ecological environmental protection with ecological rights as the core, which should not only protect and safeguard people's right to enjoy good environment, know the environment and relieve the environment, but also pay attention to the natural rights of the ecosystem, respect and guarantee other individuals or groups in the ecosystem and protect the right of future generations to live together with this system.

1.2. The Need to Build a Legal Protection System for Ecological Civilization Construction

As a typical form of contemporary advanced civilization, ecological civilization has been recognized by most people. However, if ecological civilization wants to change from a value concept to a social reality, it also needs the confirmation, adjustment and promotion of legal norms as a bridge. The necessity of constructing the legal guarantee system of ecological civilization construction is mainly reflected in the following aspects:

1, ecological civilization represents the repositioning of the relationship between man and nature, and is the fundamental change of values about nature. This change of values will inevitably lead to the reflection and renewal of the original legislative purposes, principles and systems, which will bring about the transformation and renewal of the whole legal system, and the construction of the legal guarantee system of ecological civilization will become its proper meaning.

2, ecological civilization also reflects human re-understanding of the mode of economic and social development, and the transformation of economic and social development cannot be separated from the regulation, adjustment and promotion of laws. The extensive production mode with high pollution and high energy consumption in industrial society has caused serious problems to our environment and the survival of human beings. This comprehensive and systematic change, which includes all the elements of the ecosystem, needs universal legal norms to make overall plans, coordinate and promote the construction of related fields. my" to continue to develop, and we need to re-establish a rebalancing of the ecosystem including people. This comprehensive and systematic change, which includes all the elements of the ecosystem, needs universal legal norms to make overall plans, coordinate and promote the construction of related fields.

3, as a difficult problem of global generalization, the governance of ecological crisis and the construction of ecological civilization require the joint efforts and coordinated development of all countries, which inevitably requires all countries to build an effective legal system on the construction of ecological civilization in accordance with international environmental treaties and global environmental declarations and other soft legal documents.

4, ecological civilization, as a new form of civilization, is a sublation and transcendence of the old development model and social system, and it also inevitably has a great impact on the legal person's thinking mode and legal method. The change of world outlook and methodology needs to be reflected in the system of positive law. It is necessary to construct a legal system that can better reflect the ecological thoughts such as the integration of subject and object (the integration of mind and matter and the integration of man and nature) and better adjust the relationship between man and nature.

2. The Status Quo of China's Ecological Civilization Construction Legal Guarantee System

Since the Third Plenary Session of the Eleventh Central Committee of the CPC, China has embarked on a road of reform and opening up and establishing a country ruled by law. As an important part of the legal guarantee system of ecological civilization construction, the legislation on environmental protection has made great progress in the past 35 years, and has become the fastest-growing legal department among the laws of various departments. In addition to the comprehensive environmental protection legislation "Environmental Protection Law of the People's

Republic of China", which was enacted and revised twice in September 1979, various aspects of legislation have formed a relatively complete environmental legal system. Specific performance is as follows:

1, the coverage of pollution prevention legislation is expanding day by day. Pollution prevention and control law is a very important part of environmental protection law, which refers to the general name of similar legal norms formulated by the state to control activities that produce or may produce environmental pollution and other public hazards, so as to protect the living environment and ecological environment, and then protect human health and property safety. At present, China's pollution prevention and control law covers a wide range, including laws and regulations on the prevention and control of air, water, ocean, noise, radioactivity and solid waste, as well as administrative regulations, departmental rules and related environmental standards for the control and management of chemical safety, pesticide use and electromagnetic radiation.

2, the legislation of resource protection has been comprehensively developed. Natural resources law has always been regarded as a category of economic law in China, but this does not prevent the important content of resource protection from being added to natural resources legislation. With the further spread of the concept of sustainable development and the expansion of its influence in China, more and more contents focusing on the sustainable utilization and protection of resources have appeared in the legislation of natural resources. At present, China has formulated laws and regulations on the development and utilization of natural resources such as forests, grasslands, fisheries, minerals, land, sea areas, water and coal. In the upsurge of revision of China's environment and resources legislation from the late 1990s to the early 21st century, most of these resources legislations have been revised, and the main content of revision is to pay more attention to the rational use and protection of resources and restore to the original state, which makes the natural resources law have the characteristics of environmental law in nature and become an organic part of environmental law.

3, the legislation of ecological protection is becoming more and more perfect. It is generally believed that the objects of protection established by ecological protection legislation should include the protection of natural areas and biodiversity. Therefore, China's ecological protection laws mainly include the legal protection of natural areas and biodiversity, and the main contents involve regional environmental protection (such as nature reserves, scenic spots, national forest parks, rivers and lakes, natural cultural relics and landscape comfort protection, etc.) Legislation in this area has developed rapidly since 1990s, and has successively promulgated Wildlife Protection Law and its two implementing regulations, Administrative Measures for Forest and Wildlife Nature Reserves, Nature Reserve Regulations, Soil and Water Conservation Law and its implementing regulations, Wild Plants Protection Regulations, New Plant Varieties Protection Regulations, Agricultural Genetically Modified Organisms Safety Management Regulations, and Pathogenic Microbiological Laboratory Biosafety Management Regulations》 、 Regulations on Import and Export Administration of Endangered Wild Fauna and Flora and other laws and regulations.

4, legislation on special aspects has been strengthened. In addition to the development of legislation on the classification of environmental factors, there are also some laws formulated according to special needs. These laws are not only comprehensive, but also special. These legislations include: Environmental Impact Assessment Law, Regulations on Environmental Protection Management of Construction Projects, Cleaner Production Promotion Law, Renewable Energy Law, Circular Economy Promotion Law, People's Liberation Army Environmental Protection Regulations, People's Liberation Army Environmental Impact Assessment Regulations, etc. nvironmental elements. These legislations include: Environmental Impact Assessment Law, Regulations on Environmental Protection Management of Construction Projects, Cleaner Production Promotion Law, Renewable Energy Law, Circular Economy Promotion Law, People's Liberation Army Environmental Protection Regulations, People's Liberation Army Environmental Impact Assessment Regulations, etc.

3. The Construction of Legal Guarantee System for Ecological Civilization Construction

3.1 The Construction Principle of the Legal Guarantee System of Ecological Civilization Construction

The construction of legal guarantee system for ecological civilization construction must follow certain principles as its basic basis and core spirit. Specifically, it should be constructed according to ecological priority, no deterioration, ecological democracy and shared responsibility.

1. The principle of ecological priority. Law is a way to obtain or reduce benefits, and a standardized way to confirm, balance and maintain benefits. The relationship between economic development and ecological protection can be transformed into the relationship between economic interests and ecological interests in the context of law. Fundamentally speaking, the two kinds of interests are homogeneous, homologous and symbiotic. "Homogeneity and homology" means that the conflict between the two interests stems from the tense relationship between the infinite human desire and the limited environmental resources; "Symbiosis and co-progress" means that two kinds of interests reflect the diversity of ecosystem service functions together, both of which have legitimate nature and cannot be neglected. However, economic interests and ecological interests are sometimes not completely consistent, and sometimes even seriously conflict. At this time, there is a question of who comes first, who takes who gives up. When the law resolves this conflict, if it can't give specific rules, it should at least give a principle to resolve the conflict. This is the basic principle of environmental law. The principle of ecological priority means that when economic interests and ecological interests conflict in the process of economic and social development, ecological interests should take priority.

2. Principle of no deterioration. "The purpose is the creator of all laws. Protecting the environment is the direct goal of environmental law, while safeguarding human health is the ultimate goal. Environmental protection is measured by environmental quality (ecological carrying capacity), and human health protection is measured by health status (physiological and psychological indicators). In fact, "protection" or "guarantee" not only has the negative meaning of "maintenance", but also contains the positive orientation of "improvement" or "improvement". Therefore, the above purpose can be further decomposed into two levels: the first level, the environmental quality should not be damaged, and the health level should not be reduced; At the second level, the environmental quality is improved and the health level is improved. The realization of this purpose of environmental protection law needs a "principle of no deterioration".

3. The principle of ecological democracy. The diversity of values, conflict of interests and science and technology in the field of ecological environmental protection determine that the solution of environmental legal problems must be based on the practical rationality of extensive subject participation, communication and consultation. In line with this, a series of procedural configurations that permeate equality, trust, understanding, tolerance, respect and cooperation should be constructed and gradually refined. Reflected in legal norms, it is the principle of ecological democracy.

Among the above basic principles, "ecological priority" defines the strategic position for the relationship between protection and development, "no deterioration" sets the bottom line for the impact of human behavior on the environment, "ecological democracy" provides basic ways and strength for environmental protection, and "joint responsibility" provides guidelines for the burden of environmental protection responsibility. The first two principles belong to the principle of purpose, while the latter two belong to the principle of means. The four principles are linked and cooperated with each other, and together constitute the construction principle system of the legal guarantee system of ecological civilization construction.

3.2 The Construction of the Basic System of the Legal Guarantee System of Ecological Civilization Construction

The legal system of ecological civilization construction must take a series of relatively formed and interrelated legal systems as its basic foothold. These legal systems can be roughly divided into

three categories: preventive system, regulatory system and relief system.

1. Preventive legal system. Preventive legal system is a legal system that mainly acts in the field of environmental pollution and ecological destruction prevention, including ecological planning, environmental impact assessment and environmental risk assessment, environmental standards and environmental information disclosure system.

(1) The ecological planning system. Ecological planning refers to the overall deployment and arrangement of ecological environmental protection objectives, natural resources development and utilization degree in a certain time and space according to the ecological conditions, environmental resources status and social and economic development needs of a country or a specific region. The establishment and implementation of ecological planning system can fully reflect the isomorphism and integrity of the concept of ecological civilization. According to different planning objects, ecological planning can be divided into comprehensive planning and professional planning. Among them, comprehensive planning needs to be based on the realization of multiple goals in a wide range of time and space and carry out complex interests. Typical ones are land space development (main functional area) planning; the objective of professional planning is relatively specific, focusing on a specific field of environmental protection, such as special planning for pollution prevention and ecological protection.

(2) Environmental impact assessment and environmental risk assessment system. Environmental impact assessment refers to the analysis, prediction and assessment of the possible environmental impacts after the implementation of planning and construction projects, and puts forward countermeasures and measures to prevent or mitigate adverse environmental impacts, as well as tracking and monitoring methods and systems. According to different evaluation objects, environmental impact assessment can be divided into planning environmental impact assessment and construction project environmental impact assessment. Among them, the object of planning environmental impact assessment can be subdivided into comprehensive planning and special planning; the objects of environmental impact assessment of construction projects are mainly divided into environmentally sensitive areas.

(3) Environmental standard system. Environmental standards refer to the administrative normative documents formulated by the competent administrative department of environmental protection in accordance with legal procedures and issued in a specific form in order to prevent and control environmental pollution, maintain ecological balance and protect human health. According to different standard levels, environmental standards can be divided into national and local levels. The national level includes national environmental standards and industrial environmental protection standards, and the local level refers to local environmental standards; According to different types of standards, environmental standards can be divided into environmental quality standards, pollutant discharge standards, environmental basic standards, environmental method standards and environmental standard sample standards.

2. Regulatory legal system. Regulatory legal system is a legal system that mainly acts in the fields of environmental pollution and ecological destruction management and control, including ecological ownership and ecological license, total ecological control and economic regulation and control system.

(1) Ecological ownership and ecological licensing system. Ecological ownership refers to the ownership of environmental capacity and natural resources, such as ownership, use right and supervision right. According to different rights objects, ecological ownership can be divided into environmental capacity ownership and natural resources ownership; According to the nature of rights, ecological ownership can be divided into ecological ownership, ecological use right and ecological supervision right.

Ecological license refers to an activity which is applied by an actor who may cause pollution or damage to the ecological environment, such as pollutant discharge, development and utilization of natural resources, etc., According to different license contents, ecological license can be divided into pollutant discharge license, natural resources development and utilization license, etc. The ecological ownership system needs to be macroscopically shaped and microcosmic constructed

from the aspects of legislative idea and system design. angles, ecological license can also be divided into object license, use license, time limit license, scope license, mode license and so on. ures and forms, and the relevant matters are permitted, restricted or prohibited by issuing a license. According to different license contents, ecological license can be divided into pollutant discharge license, natural resources development and utilization license, etc. According to different licensing angles, ecological license can also be divided into object license, use license, time limit license, scope license, mode license and so on. The ecological ownership system needs to be macroscopically shaped and microcosmic constructed from the aspects of legislative idea and system design.

(2) Ecological total amount control system. Ecological total amount control refers to the management methods and measures implemented in a specific period, taking into account economic, technological and social conditions, and adopting indicators such as limiting pollutant discharge and natural resources development and utilization, so as to control the level of environmental pollution and ecological damage within the allowable range of environmental capacity and ecological carrying capacity. The establishment and implementation of this system is the concrete embodiment of the "law of load and quantity" of ecosystem. According to different control objects, ecological total amount control can be divided into total amount control of pollutant discharge and total amount control of natural resources development and utilization. The perfection of ecological total amount control system should be based on expanding the application field of total amount control of pollutants, refining the connection mechanism between total amount and concentration control, delineating the red line of ecological protection, and establishing the monitoring and early warning mechanism of resources and environment carrying capacity.

(3) Eco-economic regulation system. Eco-economic regulation refers to the general name of the methods and measures that use economic means to stimulate the ecological environment and resource protection behavior or restrain the environmental pollution and ecological destruction behavior, which has obvious indirect regulation and control. According to different control purposes, eco-economic control can be roughly divided into incentive eco-economic control and inhibitory eco-economic control. Macroscopically, eco-economic regulation includes financial assistance, taxation, fees, credit, guarantee, deposit, fund and other specific means. among them, Environmental resources taxes and fees and Emission trading And so on, are the core ways of ecological economic regulation and control.

3. Relief legal system. Relief legal system is a legal system that mainly acts in the field of environmental pollution and ecological damage relief, including ecological compensation, ecological restoration and environmental public interest litigation system.

(1) Ecological compensation system. Ecological compensation refers to the behavior that, on the basis of comprehensive consideration of ecological protection cost, development opportunity cost and ecological service value, the beneficiaries of ecological protection or the injurers of ecological damage make up their costs and other related losses by paying money, materials or providing other non-material benefits to the ecological protectors or those who are damaged by ecological damage.

According to different compensation types, ecological compensation can be divided into gain ecological compensation (for ecological protection behavior) and profit-loss ecological compensation (for ecological harm behavior). The ecological compensation system needs to be macroscopically shaped and microcosmic constructed from the aspects of legislation idea (introduction of beneficiary compensation idea) and system design (ecological compensation in key ecological functional areas, horizontal ecological compensation between regions, etc.). The newly revised Environmental Protection Law clarifies that "the state establishes and improves the compensation system for ecological protection." This law provides sufficient legal basis for the establishment and improvement of a comprehensive ecological protection compensation system.

(2) Ecological restoration system. Ecological restoration refers to the process in which human beings repair damaged ecosystems by means of ecological restoration and reconstruction, and rationally distribute their development opportunities through social resources to realize the sustainable development of human society.

According to different restoration objects, ecological restoration can be roughly divided into restoration of damaged ecosystems (elements, structures, functions and their internal and external relations) and restoration of damaged relations (harmonious and balanced interests between people and ecology).

(3) Environmental public interest litigation system. Environmental public interest litigation refers to the lawsuits brought by units and individuals who have no legal interest in the case claims in order to protect the environment and natural resources from pollution and destruction, those who pollute and destroy the environment and natural resources, and administrative organs who violate the law or fail to perform their statutory duties of environmental and resource protection. According to different types of public interest litigation, environmental public interest litigation can be divided into environmental civil public interest litigation and environmental administrative public interest litigation. Both the Civil Procedure Law and the newly revised Environmental Protection Law clearly stipulate the environmental public interest litigation system, and the Environmental Protection Law extends the environmental pollution public interest litigation stipulated in the Civil Procedure Law to the public interest litigation of ecological damage. This legislation meets the needs of ecological civilization construction and opens a door for public participation in ecological environment protection.

If the system framework is "skeleton" and the principle framework is tendon, then the system framework is "flesh and blood". The integration and openness of the basic framework of the legal guarantee system for ecological civilization construction determines that the above-mentioned main systems do not exist in isolation, but are a normative community that supports each other, cooperates with each other and works together, which is the concrete embodiment of ecological civilization concept, ecological value concept and ecological law. According to the concept of ecological civilization, the legal guarantee system of ecological civilization construction is guided by abstract principles, supported by basic framework and based on main systems, showing an organic whole of coordination, unity and harmony.

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- [2] Generally speaking, environmental resources tax is the behavior that the competent state administrative organs levy taxes or collect corresponding fees from users of environmental resources in accordance with the standards and procedures for the purpose of protecting ecological environment and natural resources.
- [3] Generally speaking, emissions trading can be understood as the behavior that one polluter sells part or all of its emissions to another polluter in a certain region under the condition of keeping the total amount of pollutants discharged in the region unchanged.
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