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Climate change litigation in Asia between human rights and dignity. The Chinese case and the public interests

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Abstract [En]: This study presents a critical analysis of the climate change litigation challenges regarding the global south and particularly the current practices in China, in addition to Chinese emission control strategies, environmental planning, policy instruments, and measures to provide a sustainable environment for the present and future generations. Starting from some cases of the Global South, such as those from Pakistan and the Philippines, including their requests and the rights protected, we will see the difference with the Chinese case where pronunciations adopted by the courts show a more 'direct' and 'active' role of the judges aimed at protecting climate change. The research will highlight some of the obstacles to the successful implementation of climate change litigation in China.

Titolo: Il contenzioso sul cambiamento climatico in Asia tra diritti umani e dignità. Il caso cinese e gli interessi pubblici
Abstract [It]: Questo studio intende effettuare un'analisi critica delle sfide che pone il contenzioso sui cambiamenti climatici riguardanti il sud del mondo e in particolare le pratiche attuali in Cina, tenendo altresì in considerazione le strategie cinesi di controllo delle emissioni, la pianificazione ambientale, gli strumenti politici e le misure per un ambiente sostenibile per le presenti e future generazioni. Partendo da alcuni casi del Sud del mondo, come quelli del Pakistan e delle Filippine, tenendo in considerazione i diritti colà tutelati, si cercherà di porre in evidenza la differenza tra queste ipotesi e il caso cinese dove le pronunce adottate dai tribunali mostrano un ruolo diretto e attivo dei giudici nella protezione del cambiamento climatico. La ricerca evidenzierà così, infine, alcuni degli ostacoli che effettivamente si pongono in Cina al fine dell'attuazione di un contenzioso sui cambiamenti climatici di successo.

Keywords: contenzioso sui cambiamenti climatici, *governance* climatica, protezione del cambiamento climatico, responsabilità intergenerazionale, dignità umana
Parole chiave: Climate change litigation, climate governance, protecting climate change, intergenerational responsibility, human dignity

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1. Introduction

In 2015, the adoption of the Paris Agreement[1], requiring each of its parties to communicate a National Determined Contribution (NDC), raised hopes that states were finally going to take effective steps to address the climate crisis.

Unfortunately, the current NDCs are understood to be inadequate by the UN Environment Programme (UNEP)[2]. Thus, although many states have adopted national climate laws and policies, more and more often people turn to courts, seeking to spur the better implementation of existing rules while in the countries that lack a specific enforceable climate framework, courts have been asked to bring other norms to bear, including constitutional and human rights. However, most of the attention of scholarship has gone to a few high-profile, strategic cases in the Global North, especially Urgenda of 2015[3]. In this case, a Dutch appellate court held, as the Dutch Supreme Court recently has confirmed, that the Netherlands must reduce its greenhouse gas emissions to comply with its obligations under the European Convention on Human Rights. It has been followed, as the first case to impose a specific emissions reduction target on a state[4], by other petitions and judicial decisions[5]. Indeed, since 2016, the number of climate litigation cases has increased rapidly[6], nearly doubled[7]: several climate cases have been filed in a few countries[8] such

[1] For the impacts of the Paris Agreement on climate litigation trends and activity, see United Nations Environment Programme (UNEP) and the Columbia Law School – Sabin Center for Climate Change Law, *The Status of Climate Change Litigation – A Global Review,* 4, 8–9 (2017), available at http://columbiaclimatelaw.com/files/2017/05/Burger-Gundlach-2017-05-UN-Envt-CC-Litigation.pdf. See, also, M. Roelfsema, H. L. van Soest, M. Harmsen, *et al., Taking stock of national climate policies to evaluate implementation of the Paris Agreement*, in *Nat Commun* 11, (2020), 2096. https://doi.org/10.1038/s41467-020-15414-6.

[2] «Current NDCs remain seriously inadequate to achieve the climate goals of the Paris Agreement and would lead to a temperature increase of at least 3oC by the end of the century. Recently announced net-zero emissions goals could reduce this by about 0.5oC, provided that short-term NDCs and corresponding policies are made consistent with the net-zero goals». In these terms, The United Nations Environment Programme (UNEP), *Emissions Gap Report 2020*, XXI, Available at file:///C:/Users/emmai/Downloads/EGR20.pdf.

[3] District Court of The Hague, *Urgenda Foundation v. Kingdom of the Netherlands*, HAZA C/09/00456689, 24-06-2015. See, about, R. Cox, *A climate change litigation precedent: Urgenda Foundation v The State of the Netherlands*, in *Journal of Energy & Natural Resources Law,* (2016), 34:2, 143-163; R. Suryapratim Roy, E. Woerdman, *Situating Urgenda Versus the Netherlands within Comparative Climate Change Law,* in *Journal of Energy & Natural Resources Law,* Vol 34, (2016), 165-189.

[4] See, K. J. de Graaf, J. H. Jans, *The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change*, in *J. Environ. Law,* 2015, 27(3), 517–527.

[5] Moreover, studies of climate change litigation have proliferated over the past two decades, as lawsuits across the world increasingly bring policy debates about climate change mitigation and adaptation, as well as climate change-related loss and damage to the attention of courts. For identifying academic literature on the topic of climate change litigation published in English in the law and social sciences between 2000 and 2018 and so identify research trajectories, see, J. Setzer, L. C. Vanhala, *Climate change litigation: A review of research on courts and litigants in climate governance*, in *Wiley Interdiscip. Rev. Clim. Chang,* (2019), 10, Available at https://typeset.io/pdf/climate-change-litigation-a-review-of-research-on-courts-and-9hvxubvhdw.pdf.

[6] Working Group III (WG III)-IPPC, Climate Change 2022: Mitigation of Climate Change, 20221, 1-32. Available at: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Full_Report.pdf. Regarding the 'Shaping climate governance through litigation', see Chap. 13, sec. 13.4.2, 13-29.

[7] United Nations Environment Programme (2020), *Global Climate Litigation Report: 2020 Status Review*, 2

[8] F. Sindico, M. M. Mbengue, and K. McKenzie, *Climate Change Litigation and the Individual: An Overview*, in F. Sindico, M. M. Mbengue, (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Springer, Cham, (2021), 1–33. Between

as Austria, Norway, Switzerland, and Sweden, all relating to governments' obligations to mitigate climate change, similarly grounded at least in part on rights-based theories. Instead, also the Global South deserves great attention: in these countries, we note that are also starting claims in climate change litigation based on constitutional rights in general or human rights claims, including alleged violations of rights to life or environmental rights, and socioeconomic rights in particular.

Consequently, in the last few years, the number of climate litigation cases is also grown in the Global South[9].

For example, in 2015, a Pakistani court in the case of *Leghari v. Federation of Pakistan* held that the Government of Pakistan had failed to implement the provisions of the National Climate Change Policy 2012, accepting human rights dimensions of climate change as well as in (the) Philippines where the judges recognize obligations to mitigate climate change. Indeed, already in 1993, the Philippine Supreme Court recognized that the right to a balanced and healthful ecology is based on the concept of intergenerational responsibility prodding to keep the waters of Manila Bay clean as an obligation to future generations of Filipinos. Later, in 2008 another case, adopted on the basis of intergenerational equity and justice, the same Court opens up opportunities for future child rights litigation, particularly in the area of climate litigation.

From this perspective, this paper wants to analyze climate change litigation in the Global South including the Chinese case.

Indeed, in China compared to the abundance of policy documents on climate Governance, however, without binding legal force, we can see the lack of legally binding laws despite the Chinese government having ratified the United Nations Framework Convention on Climate Change and the Kyoto Protocol in 1992 and 2002, respectively. Thus, in this case, an important role can be played by Chinese courts even if Chinese citizens and civil society «do not, or cannot, confront the state»[10]: judges often justify public interest considerations with arguments of principle that are substantiated in various non-binding climate plans. In a case of 2017, for example, the Chinese court in helping to implement the relevant policies that address low-carbon economy issues, proclaimed that «atmospheric environmental protection is related to the fundamental interests of the people, the sustainable and healthy development of the economy, the comprehensive wellbeing of society». Later, the same Supreme People's Court expressed its

2015 and 2021, have been initiated at least 37 cases (including Urgenda and Leghari) against states, challenging the effectiveness of legislation and policy goals: see, Setzer, C. Higham, *Global trends in climate litigation* (2021), snapshot, London, 45, Available athttps://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf

[9] Working Group III, cit, 13-30.

[10] A. Y. Lo, *Active conflict or passive coherence? The political economy of climate change* in *China. Env. Polit.,* 19(6), 2010, 1013.

determination to pave the way for climate change litigation in China in its annual report on 2019 environmental justice.

To make a long story short, with this paper I would like to demonstrate that the Chinese case can be configured as an exemplar case of climate change administrative public interest litigation.

This article builds on the china case to ask two questions: firstly, what is the role of climate change litigation in promoting climate? Secondly, is it able to influence, in particular in the Chinese case, regulation by the legislature? Indeed, as observed by scholarship, contrary to the many Global North cases seeking to urge the legislator to adopt more stringent climate rules, Global South cases often seek to implement existing policies. However, despite the judge's intervention rests a need for a normative approach to prevention duties and climate-related risk disclosure to embrace climate-related risk due diligence.

For the present purposes, this article is divided into two parts.

The first part sets forth some cases of the Global South, such as those from Pakistan and the Philippines, including their requests and the rights protected, in order to see better the difference with the Chinese case. Instead, the second part comprises an introduction to the evolution of legislative frameworks starting from environmental law and some cases in this field, followed by the analysis of some political decisions by the Chinese government and, finally, pronunciations adopted by Chinese courts, which show a more direct role of the judges aimed at protecting climate change.

Part I 2. A quick look at the Countries in the Global South. The Pakistan case: from Environmental Justice to Climate Justice

Recently, scholarship has identified «new trends, constraints, and opportunities for climate litigation in the Global South»[11]. Indeed, in a number of these countries, the judiciary is often implementing government policy prescriptions in the absence of detailed climate legislation.

If in Global North, the District Court of the Hague adopted its decision in June 2015, in Global South, around the same time – precisely, three months after or rather in September 2015 - the Lahore High Court Green Bench issued a ruling in *Leghari v. Republic of Pakistan*[12]: this case, brought by a drought

[11] See, J. Peel, J. Lin, *Transnational Climate Litigation: The Contribution of the Global South*, in American Journal of International Law, 113 (4), (2019) 679-726 and J. Setzer and L. Benjamin, *Climate Change Litigation in the Global South: Filling in Gaps*, in *AJIL Unbound,* 114 (2020), 56 - 60.

[12] High Court Lahore, *Leghari v. Republic of Pakistan* (2015) W.P. No. 25501/2015, 4-09-2015. In this case, the plaintiff, Ashgar Leghari, a Pakistani farmer, sued the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). Leghari argued that the government should pursue climate mitigation or adaptation efforts, and that the government's failure to meet its climate change adaptation targets had resulted in immediate impacts on Pakistan's water, food, and energy security. Such impacts offended his fundamental right to life. Thus, according to some Author, «the courts in Pakistan and India are often identified for their climate change litigation potential because of a history of public interest litigation and a

effected Pakistani agriculturalist, was similar in its legal basis to Urgenda, though it focused on adaptation rather than mitigation commitments. Indeed, the court not only concluded that the government's failure to implement the National Climate Change Policy of 2012 but also that «the delay and lethargy of the State in implementing the Framework for Implementation of Climate Change Policy (2014-2030) offends the fundamental rights of the citizens which need to be safeguarded». The court reasoned that the constitutional rights to life and human dignity included the right to a healthy and clean environment. According to the judges, the dramatic alterations in the planet's climate system are, on the legal and constitutional plane, a «clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society» who are unable to approach the Court. In this way, this decision made history by accepting the human rights dimensions of climate change. Moreover, another very important point is the distinction between environmental justice and climate justice. Also from this point of view, the subsequent judgment which constitutes the provisional end of a series of judgments in the climate case which started in the summer of 2015 with Leghari case, provides undoubtedly a valuable example.

As confirmed, while Environmental justice, revolving around enforcing national laws, informed by international legal principles, is focused on «shifting or stopping pollutive industries»[13], Climate justice, moving beyond the construct of environmental justice, linked human rights with development. The environmental issues are local geographical issues, be it air pollution, urban planning, water scarcity, deforestation, or noise pollution. Being a local issue, the evolution of environmental justice has seen solutions entailed penalties and shifting or stoppage of polluting industries to address inequalities in the distribution of environmental hazards and benefits. Instead, climate justice, informed by science, acknowledges the need for equitable stewardship of the world's resources. Climate change has moved the debate from a linear local environmental issue to a more complex global problem. From this perspective, on the global platform, the remedies are adaptation or mitigation: the first one is a human

reputation for an 'activist' judiciary». See, B. Ohdedar, *Climate Change Litigation in India and Pakistan: Analyzing Opportunities and Challenges,* in I. Alogna, C. Bakker, and J.-P. Gauci (eds), *Climate Change Litigation: Global Perspectives,* Brill, Nijhoff (2021), 103-123, https://doi.org/10.1163/9789004447615_006.
For more about this case, see B. Preston, *The Role of the Courts in Facilitating Climate Change Adaptation*, in *The Asia-Pacific centre for environmental law Climate Change Adaptation Platform* (2016), Available at SSRN: https://ssrn.com/abstract=2829287.

[13] Lahore High Court, *Leghari v. Republic of Pakistan* (2015), Case No. 25501/2015, 25-01-2018. As a remedy, the court: 1) directed several government ministries to each nominate «a climate change focal person» to help ensure the implementation of the Framework, and to present a list of action points by December 31, 2015; and 2) created a Climate Change Commission composed of representatives of key ministries, NGOs, and technical experts to monitor the government's progress.

intervention to reduce the sources or enhance the sinks of greenhouse gases, increasing carbon sink while the second one involves adjusting to actual or expected future climate[14].

In the case of Pakistan, adaptation, underscoring prevention and reduction of the impact and risks of climate change, is largely the way forward. Adaptation, as a strategy of climate justice, engages multiple stakeholders, hitherto not part of the environmental dialogue, having to embrace multiple new dimensions like health security, food security, energy security, water security, infrastructural work, human displacement, human trafficking, and disaster management within its fold. Thus, the High Court of Lahore mandated the creation of a Climate Change Commission in order that urgent action is taken to address the impact of climate change in Pakistan.

The court acts as a 'supervisory function'[15] to ensure that a previously ignored, enacted law is applied and that fundamental rights (as enshrined in the Constitution of Pakistan and namely the right to life in Article 9 and the inviolability of human dignity protected by Article 14) are observed, playing in this way a balancing role, increasingly important in environmental and climate cases[16]. Through its interpretation of fundamental rights, recognition of the demands of climate justice, and robust approach to effective judicial enforcement, this judgment sets the standard for the kind of judgment climate litigation people could are hoping for[17]: indeed, this first climate change case from the Global South that attracted world-wide scholarly, provides a precedent that better reflects the realities and needs of the Global South.

2.1 The Philippine example

Another case that can consider as an example of litigants grounding claims in a statutory and policy framework that articulates governmental responsibilities with respect to climate change, where climate policy and legislative frameworks are in place, or implementation may be poor, and/or avenues for enforcement lacking, regards a Philippine case of clean-up, rehabilitation and protection of Manila Bay

[14] Mitigation, together with adaptation to climate change, contributes to the objective expressed in Article 2 of the United Nations Framework Convention on Climate Change (UNFCCC) signed by 154 states at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro from 3 to 14 June 1992: «The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner». See, United Nations Intergovernmental Panel on Climate Change, *Report on Mitigation of Climate Change*, 2014, 4.

[15] See, E. Barritt, B. Sediti, *The Symbolic Value of Leghari v Federation of Pakistan: Climate Change Adjudication in the Global South*, in *King's Law Journal*, 2019, 203.

[16] See, D. Shelton, *Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role,* in J. H Knox and R. Pejan (eds), *The Human Right to a Healthy Environment*, CUP (2018), 104.

[17] See, E. Barritt, B. Sediti, *Ibidem.*

ruled in 2008[18]. The Court reaffirmed the far-reaching scope of the environmental right in the Constitution, stating that «the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications». Subsequently, in 2010, because Section 16 of Article II of the Philippines' 1986 Constitution[19], being a principle, was not a self-executing provision, the Supreme Court issued Rules of Procedure for Environmental Case[20], which includes many mechanisms (Writ of Kaliksaan under rule 7[21] and Writ of Continuing Mandamus under rule 8[22]) to facilitate petitioners to bring cases before the Court: indeed, according to the rules, «any Filipino citizen in the representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws».

This willingness and openness by the Philippines judiciary to decide cases in favor of the environment are aligned with past efforts.

As a matter of fact, Philippine jurisprudence on the environment has been on a steady pace of development since the 70's and 80's, with a global boost when the famous case of *Oposa vs Factoran* has been ruled in 1993[23]. In this case, the Philippine Supreme Court courageously gave standing to generations yet unborn: the concept of intergenerational responsibility is based on the «rhythm and

[18] The Supreme Court of the Philippines, *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay,* G.R. Nos. 171947-48, December 18, 2008, 574 SCRA 661. However, according to some Authors, «today it is clear that the Supreme Court will defer to Congress on environmental problems». Latest developments, as argued by Gatmaytan, «show how unworkable Oposa has always been, and that in the end, the successful defense of the environment is not a task best suited for the courts». See, D. Gatmaytan, *Judicial Restraint and the Enforcement of Environmental Rights in the Philippines,* in *Oregon Review of International Law*, Vol. 12, 1 2010, 29.

[19] This Section establishes: «The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature».

[20] The Republic of the Philippines Supreme Court, *Rules of Procedure for Environmental cases*, A.M. No. 09-6-8-SC, 29 April 2010: http://www.law.pace.edu/sites/default/files/IJIEA/Rules_of_Procedure_for_Environmental_Cases.pdf

[21] The writ is a form of special civil action in environmental cases, a remedy available to a natural or juridical person in a case in whose «constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces».

[22] It is a remedy when a government agency or officer unlawfully neglects a duty imposed upon him by law in connection with «the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law». This writ allows the court to require the government agency or officer to perform an act or series of acts until the judgment is fully satisfied and to submit periodic reports on its progress

[23] The Supreme Court of the Philippines, *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*, No. 101083, 30-07-1993, available at: https://lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html#rnt17. In this case the plaintiffs filed a class action law suit on behalf of their children and future generations, asking the Court to order the government to cancel all existing timber license agreements in the Philippines and to stop issuing new licenses. The Court in Oposa clarified that the environmental right in the Constitution, although falling under the section dealing with State policy, is nonetheless a legally enforceable and self-executing right with correlative State duties. See, about, A.GM Vineyard, *The Right to a Sound Environment in the Philippines: The Significance of the Minors Oposa Case,* in *Review of European Community and International Environmental Law* 3(4), (2006), 246.

harmony of nature» which has to be preserved for the full enjoyment of a balanced and healthful ecology. Moreover, since then the Oposa case has been cited and replicated all over the world.

This judiciary attitude is aligned with efforts, particularly in the Asian region, to move beyond environmental adjudication and look at climate change litigation as the next big challenge for judges.

Part II 3. The Chinese experience: starting from environmental damage

In the past, China has been reluctant to discuss and take binding international commitments to mitigate greenhouse gas emissions[24]. The absence of a climate change law there has represented a strategy by the central government to avoid introducing any law that can potentially slow down economic growth. In truth, it is also difficult to pursue environmental justice despite a series of environmental legislation that has been issued since the early 1980s[25], and in 1989 a renewed Environmental Protection Law-EPL was enacted. The latter act, covering many areas of environmental protection such as water, air, solid waste, and noise pollution, imposed on each individual or legal entity, a general obligation to protect the environment, by giving everyone the right to denounce those who damaged it. Subsequent new efforts, launched in the 1990s, to strengthen its environmental laws and bring them into closer compliance with international principles, give rise to an environmental legal framework that provides only weak support to individuals interested in engaging government agencies on environmental issues or in taking actions against polluters. Indeed, if judicial redress has become the last option for dealing with environmental disputes, the past 30 years of legal reforms have affected the experience of Chinese court users.

As matter of fact, in China, courts working depend on local circumstances: generally, basic level courts'[26] that are budgetary reliance on local government and, by extension, major taxpayers, «are less likely to return favorable decisions unlike Higher-level courts, better insulated from local pressure, staffed by

[24] «This lack of state interest was partly a result of poor public awareness, sometimes even among the elites». So, B. Li, L. Fang, *Social organizations and community service delivery in China* (2018), in *UNRISD*, Available online: www.unrisd.org., 23.

[25] As 'Marine Environmental Protection Law', first promulgated in 1982 (and revised in December 1999), the 'Water Pollution Prevention and Control Law' adopted in 1984 (and amended for the first time on May 15th, 1996, and then, for the second time on June 27, 2017), followed by the 'Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution Air' formulated in 1987 (as amended in 1995 by adding a separate chapter on controlling air pollution, sourced from coal combustion, to tackle SO2 emissions and the acid rain issue) and the 'Wildlife Protection Law', enacted in 1988.

[26] In truth the Whitepaper on Court Reform in China, promulgated by the Supreme People's Court of the People's Republic of China on 29 February 2016, established that «the funds of courts will be managed in a unified way. Necessary funds of the local courts below the provincial level will be fully guaranteed by the Central Government and the provincial governments within the budgets». «The relevant budget funds will be appropriated by the centralized payment system of the national treasury». However, the funding from provincial government often isn't enough. At the moment, they can always ask local governments for additional funding if necessary and very often they will get it. See, M. YK. Woo, *Court Reform with Chinese Characteristics,* in *WASH. INT'L L.J. 27*, no. 1 (2017), 247.

better-educated judges»[27]. However, it is possible to bypass the basic court and go straight to the intermediate or high court in case of 'important cases' (*zhongda anjian* 重大案件), defined in the Civil Procedure Law as those «with a significant impact within the particular jurisdiction»[28]. The definition of an important case can vary by province, but also often involves a «baseline level of compensation»[29]. From this perspective, we can cite, among other examples, two important collective lawsuits on matters of environmental damages. In these cases, the Plaintiffs were able to file the case in the Intermediate People's Court as a court of the first instance because it was considered to have met the threshold set forth in the law as a case of «significant impact within the particular jurisdiction».

One of the first representative and influential cases, regards a judgment, resulting in a huge compensation payout for losses caused to the local farmers by water pollution, ruled by the Intermediate People's Court of Lianyungang City, in 2001. In this case, the government has paid compensation in advance and then asked for reimbursement from the companies, not only demonstrating its obligation to protect the environment, but also giving a boost to the lawsuit[30].

Another interesting case, known as the Pingnan case, representative of group lawsuits in China, dates back to 2002[31]. In this case, the plaintiffs, a collective of villagers from Xiping, Houlong and Xiadi villages, have a civil suit brought against the Rongping chemical factory at Ningde Intermediate People's Court

[27] «Not least because the effects of local protectionism are less pronounced at higher levels». In these terms, K. J O'Brien, L. Lianjiang *Suing the local state: administrative litigation in rural china*, in *The China Journal*, 2004.

[28] Civil Procedure Law, promulgated on Apr. 9, 1991 (effective Apr. 9, 1991), art. 19, available, for an unofficial translation, at: www.chinalaw.cc/lib/library/Laws_regulations.

[29] R. E. Stern, *From Dispute to Decision: Suing Polluters in China,* in *China Quarterly*, No. 206 (June 22, 2011), 294-312, Available at SSRN: https://ssrn.com/abstract=1869457.

[30] Intermediate People's Court of Lianyungang City, *Jiangsu Legal Aid Center v. Shandong Jinyimeng Paper Co., Ltd. and Shandong Linshuon*, 14-12-2001. Owing to intensive human activities and the floods of the Huaihe River in the year between 1999 and 2001, the contiguous region of Jiangsu, Shandong, Henan and Anhui provinces suffered from a variety of environmental problems and natural disasters, of which water pollution and drought-flood disasters was most observable. The farmers complained to the Shandong provincial government and the State Environmental Protection Agency (now the Ministry of Environmental Protection) as well as visiting Linshu county government to demand compensation – but no solution was offered. In 2001, the ninety-seven affected families brought a lawsuit against the two defendants, requesting that they be ordered paid compensation for loss of fish. Lianyungang Intermediate People's Court found that the defendants had been releasing pollution and that this was the cause of the plaintiff's losses, and ordered compensation to be paid. After the judgment was made, the defendant refused to accept it and appealed to the Higher People's Court of Jiangsu Province. Donghai County Legal Aid Center continues to provide legal aid to farmers. On April 16, 2002, the Jiangsu High Court rejected the appeal and upheld the original judgment. At the end of 2003, 97 farmers received 5.6 million compensation and won the final victory. For more about this case, see H. Kitagawa (eds.), *Environmental Policy and Governance in China*, Springer, 2017.

[31] Pingnan Intermediate People's Court, *Zhang Changjian et al. v. Pingnan Rongping Chemical Plant,* 2002. The final judgment ordered defendant: (a) to immediately stop the infringement, (b) to pay plaintiffs 684,178.2 yuan (approximately US$88,000) in compensation for losses to crops, bamboo, timber, etc, and (c) to clean up chromium-containing waste in the factory and in the back mountains within one year. For more about the Pingnan case in English, see J. Sakurai, *Environmental Litigation and External Influence from Outside the Court in the PRC: A Case Study of Zhang Changjian et al. v. Rongping Chemical Plant,* in H. Kitagawa (eds.), cit., 109; A. Wang, *The role of law in environmental protection in China: recent developments*, in *Vermont Journal of Environmental Law,* Vol. 8 (2007), especially pp. 212–19 and S. Oster, M. Fong, *In booming China, a doctor battles a polluting factory*, in *The Wall Street Journal*, 2006.

complaining that the factory was responsible for, environmental degradation, crop damages, and for an increased in the number of cancer in the region. Although the plaintiffs have obtained compensation, their request for 'emotional damages' (*jingsheng sunhai peichang*) was denied.

Both these cases provide an illustration of how legal principles are carried out in practice and how various legal and non-legal factors potentially affect the outcome of cases.

The legal basis for pollution compensation claims can be found in the General Principles of Civil Law - now Code civil[32] - and in the Environmental Protection Law, as then revised in 2014[33]. Finally, as evidence of decisions in favour of the plaintiffs by the highest-level courts more than basic level courts, we can cite, for instance, a 2002 water pollution case in Tangshan: in this case, the high court admonished the intermediate court for a grave legal error (yanzhong falü cuowu 严重法律错误) and sent the case back on remand[34].

However, in 2015 Supreme People's Court rules made skipping levels increasingly difficult. On December 30, 2005, the Supreme People's Court issued a 'Notice Regarding Problems with the Acceptance of Class Action Lawsuits by the People's Courts', effectively limiting most environmental cases to lower courts by mandating that all collective lawsuits start at basic level courts.

[32] Indeed, the General Principles of the Civil Law, promulgated in 1986, (and revised in 2009), has been evolved into Civil Code, issued, and come into force on January 1, 2021. This act, deriving from not only the General principles of the civil law but also from the General rules of civil law of 2017, dedicates a specific chapter, entitled 'Liability for Environmental Pollution and Ecological Damage'. According to its art. 1229: «A tortfeasor who has polluted the environment or harmed the ecological system and thus causes damage to others shall bear tort liability» while the art. 1232, disposes that «Where a tortfeasor intentionally pollutes the environment or harms the ecological system in violation of the provisions of law, resulting in serious consequences, the infringed person has the right to request for the corresponding punitive damages». The Civil Code of the People's Republic of China is available at: http://www.npc.gov.cn/englishnpc/c23934/202012/f627aa3a4651475db936899d69419d1e/files/47c16489e186437eab3244495cb47d66.pdf

[33] Article 41 of the Environmental Protection Law (EPL) states that: «A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses». See A. Wang, *The role of law in environmental protection in China*, cit., 207.

[34] The intermediate court re-decided in favour of the plaintiffs. Hebei High Court, *Liu Honggui et al. v. Tangshan jiaohuachang youxian zeren gongsi,* 2004. See, R. E. Stern, *From Dispute to Decision,* cit., 301.

4. Arriving at the justice climate

This situation is now changing.

The proliferation of local environmental courts in the mid-to-late 2000s[35], as permitted by the Supreme People's Court[36], and the new version of the EPL, extensively revised in 2014[37] , as followed, at the beginning of 2015, by the Interpretation of the Public Interest Environmental Civil Litigation promulgated by the Supreme People's Court[38], might, it would seem, have opened a new era. Indeed, with its interpretation, the Supreme Court has expanded the definition of the 'social organizations' that have the right to initiate public interest lawsuits, as introduced and regulated by Article 58 of the new

[35] In order to solve the growing environmental public interest litigation problem, various places have established special environmental protection courts. For example, on November 20, 2007, the Environmental Protection Tribunal of Guiyang Intermediate People's Court of Guizhou Province and the Environmental Protection Tribunal of Qingzhen People's Court were formally established. On May 8, 2008, the Intermediate People's Court of Wuxi City, Jiangsu Province established a special environmental protection tribunal. As of the end of 2019, there were 1,353 specialized environmental and resource judicial bodies nationwide, including 513 environmental and resource courts (including 26 higher people's courts, 118 intermediate people's courts and 368 basic people's courts), 749 collegial panels, and 91 people's courts. See, about, Supreme People's Court of China, *China's Environmental Resources Trial (2019*), Available at http://www.court.gov.cn/zixun-xiangqing-228341.html

[36] These tribunals, introduced first in 1989 and called to ease litigation by offering a sympathetic venue or improving access to information, were expressly permitted by the Supreme People's Court (SPC), which issued in 2010 a circular that included a paragraph that established that courts with a relatively high number of environmental cases are permitted to establish environmental tribunals. See, A. Moser, *The Yangzonghai case: struggling for environmental justice*, in S. Geall (ed. By), *China and the environment : the green revolution*, London, 2013.

[37] The revised EPL contains substantive and procedural changes that significantly update China's environmental legal regime: particularly, it sought to promote public participation as a way to foster environmental protection and to bypass the frequent inertia of local governments. See, about, C. McElwee, *Environmental Law in China: Mitigating Risk and Ensuring Compliance,* Oxford Unioversity, Oxford, 2011; Z. Bo, C. Cong, G. Junzhan, *New Environmental Protection Law, Many Old Problems? Challenges to Environmental Governance in China,* in *Journal of Environmental Law*, Volume 28, Issue 2, (2016), 325–335.

[38] See, in particular, *The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation Cases*, which was issued in January 2015, Available online at: https://www.ajne.org/sites/default/files/resource/laws/7187/spc-interpretations-epil-ec-china.pdf. Whit this Act the Supreme People's Court has adopted several 'judicial interpretations' which clarify the modalities of public interest environmental litigation, in particular with regard to standing and procedural arrangements. Moreover, according to Article 1 of this Interpretation, «where organs and related organizations provided for by law file suits in accordance with the provisions of Article 55 of the Civil Procedure Law, Article 58 of the Environmental Protection Law or other laws, against actions polluting the environment or destructing the ecology that have already harmed the public interest or have a significant risk of harming the public interest; and where the case meets provisions of article 119(2) and 119(3) of the Civil Procedure Law». See, R. Zhang, Q. B. Mayer, *Public Interest Environmental Litigation in China*, in *Chinese Journal of Environmental Law* 1, (2017), 202–228, particularly for definitions and examples of 'NGO' and subcategories.

EPL[39], and provided guidelines on the burden of proof regarding these case litigations[40]. Thus, in the last decade, through this new procedure, the way was opened for the public to resolve environmental disputes, supervise environmental quality, and enforce government policy, making increasing, with the growing focus on environmental issues, political need for greater public participation in the area. Consequently, Chinese environmental non-governmental organizations (NGOs) have recently started to sue companies and bringing mitigation being a central issue[41], as, for instance, in the case of an NGO that sued on August 2017 the provincial grid enterprise in Gansu since the company has substituted renewable energy with coal-fired power, increasing of air pollution and GHG emissions, with direct implications for climate change: this case is so considered the first climate change litigation case in China[42].

[39] According to Article 58: «For activities that cause environmental pollution, ecological damage and public interest harm, social organizations (NGO) that meet the following conditions may file litigation to the people's courts:1. Have their registration at the civil affair departments of people's governments at or above municipal level with sub-districts in accordance with the law, 2. Specialize in environmental protection public interest activities for five consecutive years or more, and have no law violation records. Courts shall accept the litigations filed by social organizations that meet the above criteria. The social organizations that file the litigation shall not seek economic benefits from the litigation». About environmental Public interest litigation, see, J. Liu, *Environmental Justice with Chinese Characteristics: Recent Developments in Using Environmental Public Interest Litigation to Strengthen Access to Environmental Justice,* in *Florida Agricultural & Mechanical University Law Review*, (2015), 260. The A. suggests that the decision to grant NGOs access to EPIL is an experiment by the central government, especially targeted at localities suffering from weak enforcement or non-enforcement of environmental regulations.

[40] The first private environmental public interest lawsuit after the modification of EPL has been the 'Fujian Nanping Ecological Destruction Case', initiated in May 2015 to the Intermediate People's Court of Nanping City, by the non-governmental environmental protection organization Friends of Nature and Fujian Green Home against an enterprise since illegally mined stones in Hulu Mountain, Yanping District, Nanping City, Fujian Province, and dumped the stripped soil and waste rocks down the mountain, causing serious damage to the original vegetation. For an analysis of the legal provision of environmental litigation in China and an examination of several instances of EPIL initiated by NGOs between 2015 and 2019, see L. Xie, L. Xu, *Environmental Public Interest Litigation in China: A Critical Examination,* in *Transnational Environmental Law*, 441, 2021. Moreover, the first case of a social organization acting as the subject of an environmental public interest civil lawsuit, coming to determine the conditions that need to be met to bring a claim of this sort, regards an environmental federation that in 2009 brought an environmental public interest case in Intermediate People's Court, having received a complaint from residents of Jiangyin in Jiangsu, on China's east coast against a Company because was creating air, water and noise pollution during the process of unloading, washing and transporting iron ore, severely impacting their quality of life. On September 22, 2009, the case was resolved through mediation and the defendant was required to correct its environmental violation. Intermediate People's Court of Wuxi City, *Jiangsu Province, the China Environmental Protection Federation v. Jiangsu Jiangyin Port Container Co., Ltd,* 22-09-2009.

[41] See Y. Zhao, S. Liu and Z. Wang, *Prospects for Climate Change Litigation in China*, in *Y*, May 29, 2019, 349, available at https://doi.org/10.1017/S2047102519000116.

[42] On June 6, 2017, the ONG called Friends of Nature Institute (FON) sued the State-owned enterprise, Gansu State Grid for its high abandonment rate of wind power, in violation of Articles 2 and 14 of the Renewable Energy Law, substituted with coal-fired power and in this way increasing air pollution and GHG emissions. However, in August 2018, the Lanzhou Intermediate Court refused the claim of FON, on the ground that the «State Grid Gansu Electric Power, as a power grid company that purchases, sells and deploys power supply, is not a power generation company». According to the court, the grid company did not directly commit to environmental pollution or ecological damage through its own activities. As a result, the applicant failed to meet the conditions for instituting an action. Unsatisfied by this decision, FON appealed to the High Court of Gansu Province.On December 28, 2018, the High Court of Gansu Province overruled the decision of the lower court. On the ground of Article 119 of the Civil Procedure Law, as there were specific defendant and claim, the High Court upheld the application on procedural issues and ordered the Gansu Mining Area Intermediate Court to hear the case. As of June 2021, there was no further update of the litigation.

Moreover, in the last decade, China is pursuing a number of policies that seek to improve environmental quality in the future, which will generate a significant market potential for clean technologies. Along this line, recent institutional reforms of the central government are including climate change within the portfolio of the new Ministry of Ecology and Environment, whereas it used to be within the purview of the National Development and Reform Commission (NDRC)[43]: this was a high-level political body responsible for economic planning that, moreover, has launched the first Energy Conservation Plan already in 2004[44] and issued the country's first global warming policy initiative (China's National Climate Change Programme) in 2007[45], even if, according to some scholarship, China's primordial objective was again in these documents economic growth[46]. Also for these reasons, China has continued doing efforts, especially to ensure appropriate implementation of China's energy and contribute to greenhouse gas emission reductions, to make China's ongoing climate change efforts and environmental regulatory system much more effective.

However, in the meantime, the Energy Supervision and Management Office of Gansu Province issued on May 2021 the a plan for comprehensive supervision of Clean Energy Consumption in Gansu Province which specified the responsibilities of implementation and self-monitoring for companies including State Grid Gansu Electric Power Co. 'Implementation Plan for Comprehensive Supervision of Clean Energy Consumption in Gansu Province', Gansu Energy Supervision Office, May 27, 2021. http://m.solarzoom.com/article-154789-1.html. *Friends of Nature v. State Grid Ningxia Electric Power Co (自然之友诉国网宁夏电力公 司) (2018) and Friends of Nature v State Grid Gansu Electric Power Co (自然之友诉国网 甘肃电力公司) (2017*). See further, H. Zhang, *Prioritizing Access of Renewable Energy to the Grid in China*, in Chinese Journal of Environmental Law, 3 (2019), 167–202 and X. Wang, *The phenomenon of 'abandoning the wind and abandoning the light' is serious, and the environmental protection organization's lawsuit against the State Grid Gansu Company will enter the substantive trial*, in *Jiemian News*, 2019. Available://www.jiemian.com/article /2833198.html?spm=smpc.content.content.1.1549238400023WRl5Apr.

[43] From 2007 onwards, NDRC established and improved the priority power generation system and pushed ahead the green and efficient development and utilization of coal, popularizing the application of advanced energy conservation and emission reduction technologies, and speeding up the ultra-low-emission transformation of coal-fired power generation units. See, Ministry of Ecology and Environment, *China's Policies and Actions for Addressing Climate Change*, 2018. Available online at: http://english.mee.gov.cn/News_service/news_release/201812/P020181203536441502157.pdf. See also, D. Stanway, *China Shake-Up Gives Climate Change Responsibility to Environment Ministry*, Reuters, Mar. 13, 2018, Available at: www.reuters.com/article/china-parliament-environment/china-shake-up-gives-climate-change-responsibility-to-environment-ministry-idUSL3N1QV23P

[44] National Development and Reform Commission, *China Medium and Long Term Energy Conservation Plan,* November 25, 2004, which aims to push the whole society towards energy conservation, wanting to promote a «sustainable social and economic development and thus realize the grand objective of building a society that is well-off in every aspect», Available at http://fourfact.com/images/uploads/China_Energy_Saving_Plan.pdf

[45] This document, with which China wanted to push forward UN climate change negotiations, however without compromising its national development goals, is available at: https://english.mee.gov.cn/Resources/Plans/Plans/. About first China's efforts, especially its energy conservation programs and efficiency measures, contributing to greenhouse gas emission reductions, see T. Yang, *The Implementation Challenge of Mitigating China's Greenhouse Gas Emissions* (2008), in *Georgetown International Environmental Law Review*, Vol. 20, No. 4, 2008, Vermont Law School Research Paper No. 09-05, Available at SSRN: https://ssrn.com/abstract=1112287.

[46] V. V. Benguiat y Gomez, *International Public Opinion on China's Climate Change Policies*, in *Chinese Studies*, Vol.2 No.4, 2013, 164.

In this way, since 2014, China enters a new era of 'proactive'[47] climate policymaking, after the first two phases, the first one, from the 1990s to 2007, characterized by scientific research whereas the second phase (from 2017 to 2013) has seen climate change first and foremost treated as an international problem triggered by international pressures, giving being to launch policies and programs specifically targeting climate change[48]. As matter of fact, the new Department of climate change (which has the function, among others, to initiate the formulation and the implementation of China's major objectives, policies and plans, and institutions for the control of greenhouse gas emissions, on the promotion of green and low-carbon development, and on the adaptation to climate change) has issued in 2022, with the Ministry of science and technology, the Ministry of Finance and other 17 departments jointly, the national climate change adaptation strategy 2035[49]. This document, with a different approach than the past plans, emphasizes expressly major countermeasures to climate change. Compared to the original published in 2013, the new strategy promotes 'proactive adaptation': in this case, the adaptation to climate change, intending to take advantage of favorable factors and prevent unfavorable ones, has as a key component strengthening monitoring and assessment of climate risks. and mitigation, the efforts to reduce or prevent greenhouse gas emissions through new technologies and renewable energy.

Moreover, in 2016, the Chinese Supreme People's Court issued an Opinion on the enhancement of judicial functions in promoting the construction of ecological civilization and green development (the 2016 Opinion)[50] and a report on the environment and resources related to Chinese judicial practices (the Report)[51]. These acts constitute the first 'formal confirmation of Change Climate Litigation in Chinese official judicial documents[52]. Indeed, both documents explore judicial measures as a response to climate change', including disputes concerning 'carbon emissions', 'energy conservation', 'green finance', and 'biodiversity conservation'. Moreover, the opinion explores the trial rules for provincial governments to initiate lawsuits for compensation for ecological and environmental damages (para. 19). Its determination

[47] See, also a white paper titled *Responding to Climate Change: China's Policies and Actions*, released by the State Council Information Office of the People's Republic of China, available at http://english.scio.gov.cn/whitepapers/2021-10/27/content_77836502_2.htm.

[48] Q. Ye, Q. Xiaofan, *Three Decades of Climate Policymaking in China: A View of Learning*, in *Sustainability* 14 (2022), 2202, available at www.mdpi.com/2071-1050/14/4/2202/htm#sec2-sustainability-14-02202

[49] The country, seeking to build a climate-resilient society by 2035, with significant improvements in its ability to adapt to climate change, has mapped out a strategic plan to enhance its climate resilience, putting emphasis on both adaptation and mitigation in the face of global climate change. Moreover, China first issued a national climate change 'adaptation' strategy in 2013, and for the first time, made climate change adaptation a national strategy. The new plan has focused on improving climate change monitoring and early warning and risk management.

[50] The Supreme People's Court of the People's Republic of China, *Opinions on Giving Full Play to the Role of Judicial Functions to Provide Judicial Services and Guarantees for Promoting Ecological Civilization Construction and Green Development,* (2016 Opinion). Available at: https://www.court.gov.cn/zixun-xiangqing-21651.html.

[51] The Supreme People's Court of the People's Republic of China, *China Environmental Resources Trial (White Paper),* Beijing (2016), 24.

[52] Y. Zhao, S. Liu and Z. Wang, cit.

to pave the way for climate change litigation in China has been expressed by The Supreme People's Court again in 2019[53].

4.1 Climate change litigation in China

However, despite several political acts, is still relatively little political interest in China in passing a climate change law.

Consequently, according to scholarship, Chinese courts are playing an important role in applying climate policy in civil disputes[54]. In this regard, two important points must be highlighted.

Firstly, judges have shown a tendency to behave more akin to enforcers of state policy than as impartial arbitrators of the law[55]. As matter of fact, in the absence of detailed legislation regarding the matter of changing climate, Chinese courts are trying to 'fill legislative gaps'[56] by implementing government climate policies, relying on its documents. Although they are not legally binding, these climate policy documents are often used by judges as 'persuasive authority' to support their reasoning in their decisions[57]. They refer to the state environmental policies as circumstances, considering them as an interpretive or evidentiary tool, alongside established legal norms: in this way, the indirect or explanatory reference to national (or local) climate policies becomes a technique of legal reasoning that transforms, it shifting from formalism to a more pragmatic approach of judicial argumentation making more room for the use of state policy, as confirmed then by the Supreme Court in 2018[58], governmental documents into 'vital elements'[59] in civil adjudication.

Another important point is that when Chinese judges act as collaborators in the regulatory process, interpreting and engaging with strong government-led efforts to mitigate climate change, look at national or local state policies to determine what is required for, in particular, the public good or the public interest, and thus justify its rulings and interpretations.

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[53] The Supreme People's Court of the People's Republic of China, *White Paper on Environmental Justice*, 2019, par. 4 entitled **'**Hearing climate change response cases in accordance with the law', available at: http://www.court.gov.cn/zixun-xiangqing-228341.html.

[54] On 1 Jan. 2014, China initiated a major policy change: its judicial decisions – previously available only to the lawyers and parties involved – must now all be published online. Thus, all sentences commented here are on China Judgments Online, available at: http://wenshu.court.gov.cn (in Chinese).

[55] Z. Mingzhe, *The Rule of Climate Policy: How Do Chinese Judges Contribute to Climate Governance without Climate Law?*, in *Transnational Environmental Law*, (2021), 129.

[56] J. H. Knox, C. Voigt, *Introduction to the Symposium on Jacqueline Peel & Jolene Lin*, "*Transnational Climate Litigation: The Contribution of the Global South"*, Volume 114, Cambridge, 2020, 35

[57] Y. Zhao, S. Liu and Z. Wang, cit., 353

[58] The Supreme People's Court, *Recommendations on Strengthening and Standardizing Arguments in Judicial Decisions*, 12 June 2018, No. 10, available at: http://www.court.gov.cn/zixun-xiangqing-101552.html. The first recommendation is that legal reasoning will serve simultaneously 'disputes and leading values', promoting social harmony and stability.

[59] Z. Mingzhe, cit., 132.

In the name of public interest, a Court of Beijing in 2018, for instance, took into consideration, even if not as the legal ground per se for the judgment, the National Air Pollution Prevention and Control Action Plan formulated by the State Council in 2013 [60] and mitigation effects, holding the restriction of the scope of the plaintiff's mining right possible: the extent that it jeopardized the 'public interest', the mining company's right would not be exercised[61]. Moreover, rejecting the plaintiff's request, the court refers to the courts of first and second instance, although, as observed by the judges themselves, China «is not a case-law country», both holding that the power supply involved not only the economic interests, but also the social and public interests. In this way, the Court's decision considers the «balance between the social and public interests and the economic interests», giving priority to social interests: after all, the project to build the «XXXX UHV AC power transmission and transformation»[62] is «a national key project and also involves major social and public interests»[63].

This Chinese judiciary attitude doesn't match trends emerging from the Global north jurisprudence and also from a more generalized view of global south jurisprudence with robust civil societies and legal systems: in these cases, the judiciary may justify its decision with reference to human rights or to ethical ideals such as intergenerational equity. Showing themselves lacking this 'rights turn' [64] in climate change-related cases, Chinese climate change litigation currently takes the form of private disputes between companies and their clients. In the last decade, the cases mainly involve disputes over energy management

[60] The Plan proposed to improve overall air quality across the nation through five years, introducing ten measures to reduce heavy pollution by a large margin and make obvious improvement of air quality in Beijing-Tianjin-Hebei Province, the Yangtze River Delta and the Pearl River Delta. See, about, C. Yang, p*olicies, regulatory framework and enforcement for air quality management: The case of China*, OECD Environment Working Papers 157, OECD Publishing, 2020

[61] Court of Xicheng District, Beijing Municipality, *Qianyu Mining Co. Ltd v. Electricity Engineering Company of Hunan Province,* (2016) Case No. Jing 0102 Civ. 1894, 28-12-2018. In this case, the plaintiff Chengde County Qianyu Mining Co., Ltd. obtained the mineral resources exploration license issued by the Hebei Provincial Bureau of Land and Resources in accordance with legal procedures, and has legal rights to the gold-copper-molybdenum polymetallic mines in the Chengde County, Hebei Province involved in the case. the right of exploration right, and its legitimate rights and interests shall be protected by law. The defendant was approved by the National Development and Reform Commission to establish a project and approved by the relevant government departments to build the XXXX UHV AC power transmission and transformation project involved in the case. The relevant project approval, approval and construction procedures for the XXXX UHV AC power transmission and transformation project involved are also legal and valid, and there is no illegal construction. Moreover, according to the Court, «the plaintiff has not yet provided sufficient evidence to prove the basis for the calculation of the amount of loss, the price of the exploration right, the royalties of the exploration right, the investment in the preliminary exploration of the mineral resources, the investment in the mining equipment, the compensation for the corresponding relocation, etc. The plaintiff failed to provide evidence to prove that the above-mentioned related losses and the specific amount of the losses were caused by the project involved. It should also be pointed out that, based on the natural properties of the distribution of mineral resources, it is obvious that the area of the plaintiff's claim that the project involved in the case overwhelms its mineral resources cannot be used as the only basis for calculating the above losses».

[62] About this project, see above, note 62.

[63] Court of Xicheng District, Beijing Municipality, *Qianyu Mining,* cit.

[64] Z. Mingzhe, cit., 136.

service contracts. Energy conservation is one of China's 'basic state policies', and has been integrated with the Energy Conservation Law (ECL)[65].

From this perspective, another Court - the Zhanjiang Middle Court - referring explicitly in its reasoning to the government's environmental policies (and particularly to the 2013 Air Pollution Prevention Action Plan), affirmed in 2017 that Chinese «Society is related to the realization of the great rejuvenation of the Chinese nation's dream" and therefore an important role is played by the 2013 Air Pollution Plan in order to effectively improve air quality. This is because, as the judge expressly declares, "atmospheric environmental protection is related to the fundamental interests of the people", the sustainable and healthy development of the economy, the comprehensive wellbeing of society, and "affecting social harmony and stability»[66].

However, in these cases, involving actions related to contract disputes brought by or involving energy or biotechnology enterprises, concern for climate change does not feature even at the periphery of the argument. Indeed, it is the court that seeks to help to implement public policies on the low-carbon economy and not already the plaintiffs.

4.2 Environmental public interest litigation

A new judicial phenomenon is however emerging in the last years regarding air pollution and public interest[67].

Indeed, according to the new version of Article 55 of the Environmental Protection Law [68], public interest litigation can be initiated by «any authorities or relevant organizations, as prescribed by the law» in relation

[65] Article 66 ECL explicitly stipulates that «the state supports the promotion of power demand side management, contract energy management, energy conservation voluntary agreements, and other energy-saving methods».

[66] Intermediate People's Court of Zhanjiang City, Guangdong Province Civil Judgment, *Wu Lunyin v. Guangdong Zhanjiang Mazhang District Da'an Automobile Transportation Co. Ltd*, No. 08 civil 107, 13-03-2017. This case involved a taxi management contract signed between the owner of the car and a taxi management company. The latter wanted to terminate the contract unilaterally on the grounds that it was a 'yellow labelled car', and therefore a heavy-polluting vehicle, which was subject to the state's mandatory write-off policy. The court decided in favour of the taxi company deciding to dismiss the plaintiff's claim since it was clearly inconsistent with the state's current policy: the plaintiff, «continuing to operate, it does not comply with the national policy of eliminating yellow-label vehicles». Indeed, according to the judges, «in accordance with Article 6 of the General Principles of the Civil Law of the People's Republic of China, Civil activities must abide by the law. If the law does not provide for it, it shall abide by the national policy».

[67] See, z. Y. Zhao, L. Wei and L. Shuang, *Tort-Based Public Interest Litigation on Air Pollution in China: A Promising Pathway for Chinese Climate Change Litigation?* J. Lin, D. A. Kys (eds by), *Climate Change Litigation in the Asia Pacific,* Cambridge, Cambridge University, (2020), 394-415

[68] The art. 55, revised in 2017, establishes: «Legally designated institutions and relevant organizations may initiate proceedings at the people's court against acts jeopardizing public interest such as causing pollution to the environment or damaging the legitimate rights or interests of consumers at large. In the event that a people's procuratorate finds any act that does harm to the protection of the ecological environment and resources, any practice in the food and drug safety field that infringes upon the legitimate rights and interests of consumers, or any other behavior that damages the social benefits of the masses, while performing its duties and functions, it may file an action to the people's court, provided that there is no such organ or institution specified in the preceding paragraph or the organ or institution specified in the preceding paragraph decides not to bring a lawsuit. Where the organ or institution specified in the

to any «conduct that pollutes the environment, infringes the legal rights and interests of groups of consumers or otherwise damages the public interest». In this way, public interests related to compromising environmental protection can be asserted by public prosecutors allowed to file tort-based lawsuits against polluters, individuals, or enterprises that they believe are harming the public interest, such as by polluting the environment or endangering food safety. Moreover, article 58, allowing environmental public interest litigation to target also actions that cause ecological damage, allows in this later way initiating litigation by NGOs on local and also transregional pollution and the risks associated with environmental impacts[69].

Some scholars argued, thus, that courts should be the last defense line to safeguard the public interest, playing an active role in the Environmental public interest litigation system[70].

In this context, in the first civil case environmental public interest litigation against air pollution, decided in 2016, a Court of Dezhou City thus believes that «the behavior of enterprises, institutions, and other producers and operators to discharge pollutants in excess of the pollutant discharge standards or the total emission control indicators of key pollutants can be regarded as behaviors that have a major risk of harming social and public interests»[71]. For these reasons, the Court establishes suspension of all activities and compensation to remedy the air pollution quality. As matter of fact, article 18 of the Judicial Interpretation of Environmental Civil Public Interest Litigation, promulgated by the Supreme Court, prescribes that for acts that pollute the environment and damage ecology, causing harm to 'public

preceding paragraph files a lawsuit, the people's procuratorate may give endorsement to such lawsuit». About Civil Procedure Law and its extension of environmental tort liability to cover environmental damage in part VII that further enable environmental social organizations to protect nature by Environmental Public interest litigation, see, Z. Tiantian, C. Yen-Chiang, *Standing of Environmental Public-Interest Instigation in China: Evolution, Obstacles and Solutions*, in *Journal of Environmental Law*, Vol, 14, (2018) 3, 369-397.

[69] However, NGOs operate within a scope acceptable to the government, not criticising the central state, See, about, A Y. Lo, *Active conflict,* cit., 1021.

[70] Y. Lin, *The Dilemma and outlet of social organization participation in environmental public interest litigation*, in *Heilongjiang Ecological Engineering vocational Journal*, Vol 10, UNRISD, Geneva, (2019), Available online: www.unrisd.org., 5.

[71] Intermediate People's Court of Dezhou City, Shandong Province, *China Environmental Protection Federation and Dezhou Jinghua Group Zhenhua Co.,* Ltd., No 1, 18-07-2016. On 25 March 2015, the All-China Environment Federation, filed a lawsuit in Dezhou Intermediate People's Court, requesting Zhenhua Co, Ltd to immediately stop discharging atmospheric pollutants in excess of prescribed standards. Moreover, it requests to invest in more air pollution prevention and control facilities, suspend production and operation activities until corrective measures had been accepted by the competent environment protection administrative authorities and compensate a total amount of RMB 28.2 million to the special account of the local government for treatment of the air pollution. Zhenhua Co, Ltd was an entity manufacturing glasses and deep-processed glass products located in Dezhou City, Shandong Province. Although it had invested desulfurization and dust removal facilities, the atmospheric emissions of the entity were still in excess of prescribed standards, had thus caused air pollution and had seriously affected the lives of local residents. The Dezhou Intermediate People's Court, made its judgment and supported the Plaintiff, the All-China Environment Protection's requests and ordered Zhenhua Co, Ltd to pay a total amount of RMB 21.9836 million for losses suffered by the defendant's excessive discharging of atmospheric pollutants to remedy the air environment quality of Dezhou City. Zhenhua Co, Ltd was also required to make a public apology in the media at or above the provincial level.

interest'[72], the plaintiff may request the defendant to bear civil liabilities, including cessation of infringement, removal of obstruction, elimination of danger, restoration to the original state, compensation for losses and an apology. This case, confirming the eligibility of a non-governmental organisation to file civil public interest litigations, sets an example for the subsequent environmental public interest litigations in the field of air pollution control for several reasons and in particular for discussion of remedies for the ecological destruction caused by air pollution and the assessment of the ecological and environmental damage using the 'virtual restoration cost method'[73]. This is also in another case marking the public-interest lawsuit concerning air quality initiated by prosecutors in Beijing[74]: the verdict not only punishes the defendant for what they have already done but also includes an order that avoids further damage. Indeed, «once the ecological environment is damaged by pollution», moreover causing «harm to human health, and damage social and public interests", it is "irreversible and difficult to restore». For these reasons, according to the Court, it needs to stop, «to meet the maximum protection of the public interests of the ecological environment».

In this new logic, environmental civil public interest litigation trials should follow the principles of protection and prevention first.

In this way, the judges seek to go beyond the scope of environment protection law and take up the function of renewable energy law[75]. On the other hand, the State Council authorized, with the Plan on the Reform of Ecological Damage Compensation[76], provincial and municipal governments to act as plaintiffs in claims for compensation for ecological environmental damage[77] in their respective

[72] In accordance with article 18 «For behavior that pollutes environment and destructs ecosystems, causing harm to public interest, the people's courts may require the polluters to bear civil liabilities such as cessation of the infringement, removal of the obstacles, elimination of the danger, restitution, compensation for losses, formal apologies, etc».

[73] See, Y. Wenjun, *The Zhenhua Case: the emergence of civil environmental public interest litigation in China*, in *The Journal of World Energy Law & Business*, Vol 14 (2), (2021), 116.

[74] Beijing Fourth Intermediate People's Court, *The People's Procuratorate of Mingjing City and Beijing Colorful Lianyi International Steel Structure Engineering Co., Ltd. for the Air Pollution Liability*, No. 73, 5-05-2018. In this case, the plaintiff of the public interest lawsuit - the Fourth Branch of the Municipal Procuratorate - filed a lawsuit with the court, asking to order Duohua Company to immediately stop infringing on the atmospheric environment and order Duohua Company to compensate for the ecological environment caused by the illegal discharge of volatile organic waste gas produced by spray paint: during the process of manufacturing steel structures in the production base of Pigezhuang Ercun Village West in Daxing District of Beijing, the painting process was not carried out in a closed space, and the waste gas pollution prevention and control facilities were not installed in the painting site. The volatile organic compound waste gas is directly discharged into the atmospheric environment without treatment, causing pollution to the surrounding atmospheric environment. The act of directly discharging into the atmosphere after treatment violates the provisions of Article 45 of the Law of the People's Republic of China on the Prevention and Control of Air Pollution.

[75] J. Fengliang, *On the environmental civil public interest litigation system for the protection of the climate in China: Comments on two cases from a pragmatism perspective,* in *Journal of World Energy Law and Business,* (2021), 8.

[76] See, Ecological Environment Damage Compensation System Reform Plan, 18 Dec. 2017, available at: http://www.gov.cn/zhengce/2017-12/17/content_5247952.htm

[77] 'Ecological damage' is defined in the Plan as «adverse changes in environmental factors such as atmosphere, surface water, groundwater, soil, forest and other biological factors, such as plant, animal and micro-organism, and the degradation of ecosystem function caused by the environmental pollution or ecological destruction».

administrative areas: so, although climate change and air pollution are different issues, given their close relationship, the Chinese Public interest litigation on air pollution could almost serve the same ends as Climate change litigation[78].

5. Conclusion

Despite the efforts of the Chinese government to tackle the climate change question, some gaps still exist in Chinese climate change regulation, especially with regard to legally binding aspects of adaptation and GHG emissions reduction targets.

Moreover, China's continued focus on economic development objectives, which still runs through China's climate programs, raises questions as to whether its policies can really promote environmental sustainability. Thus, in this context «litigation can provide a limited opportunity for judges, lawyers, academics, and NGOs to explore new roles' and, in so doing, offer proactive strategies to tackle climate change, while gently expanding 'the universe of political possibilities»[79]. In other words, climate litigation is another important arena for various subjects to confront and interact over how climate change should be governed, appearing to be a powerful tool for communicating the urgency of climate change[80]. Moreover, though has not been generally examined enough scientifically whether and to what extent differing traditions, laws, and political systems influence the role and importance of climate litigation in different countries[81], really interesting legal appear legal reforms developed in some countries, such as the environmental public interest law in China that allows individuals and groups to initiate environmental litigation[82].

However, in contrast to other Global South jurisdictions, climate litigation in China, if and when it emerges, is not likely to take the form of actions by citizens to compel the government to act.

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[78] Y. Zhao, S. Liu and Z. Wang, cit., 374.

[79] R. Stern, *Environmental Litigation in China: A Study in Political Ambivalence*, Cambridge University Press, (2015), 2.

[80] P. V. Calzadilla, *Climate Change Litigation: A Powerful Strategy for Enhancing Climate Change Communication,* in *Climate Change Management*, (2019), 231.

[81] J. Peel, H. M. Osofsky, *Climate Change Litigation,* in *Annu. Rev. Law Soc. Sci.*, 16(1), 2020, 21–38, particularly 32, available at https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-022420-122936. According to these A., in the broader literature offering a wealth of material to draw on in studies examining the impact of strategic litigation, «two broad approaches have emerged to the assessment of case law's impact: (a) a linear, causal analysis that seeks evidence of the mechanisms or links of influence between a decision and behavioral change on the part of key actors (Rosenberg 2013) and (b) a constitutive analysis that aims for a more complex relational understanding of legal claim-making within socially structured contexts». However, it is important in order to assess strategic climate litigation efforts to employ «evaluation models based on qualitative process tracing techniques, which assess whether litigation makes a plausible contribution to desired outcomes articulated in an overall theory (…), the dynamic sociopolitical and scientific context in which climate litigation takes place also makes for challenges in assessing impact».

[82] Working Group III, cit, 13-30.

If in the other countries, the majority of climate change litigation cases are brought against governments, by civic and non-governmental organisations and corporations, in China we find none case[83]. In the Chinese case, the actions are against polluters by NGOs or the procuratorates in the form of Environmental public interest litigation or the individual people where, if anything, is the court that will raise the Climate Change issue. In China, the majority of Climate cases regards societies and companies that are mostly carbon emitters[84]. In contrast to the other cases of the Global South, involving human rights protection, and pursuing climate change goals by suing government bodies[85], these cases are contract-based civil disputes: ultimately, they are private interest litigation cases[86] and do not address climate change-related concerns per se. Also if the courts seek to promote governmental policies that have been introduced to address climate change, so far, China has not seen a single climate change litigation case in the traditional sense.

To conclude, under China's current framework, given the subjection of courts to the supervision of the legislative branch[87] and a subservient relationship between the judiciary and the executive[88], it seems highly unlikely that Climate change litigation involving public authority defendants would ever be claimed in China if government duties to reduce GHG emissions will be not prescribed by law[89]. Indeed, current Chinese laws[90] demand only limited respect for the constitutional principle of judicial independence[91]

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83 For a review of key global developments in climate litigation over the period May 2020 to May 2021, see J. Setzer, C. Higham, cit.

84 See, H. Xiangbai, *Mitigation and Adaptation through Environmental Impact Assessment Litigation: Rethinking the Prospect of Climate Change Litigation in China*, in Transnational Environmental Law, Vol. 10, Iss: 3, (2021), 413-439.

85 See United Nations Environment Program (UNEP), T*he Status of Climate Change Litigation: A Global Review* (UNEP, 2017), 14, available at: http://columbiaclimatelaw.com/files/2017/05/BurgerGundlach-2017-05-UN-Envt-CC-Litigation.pdf.

86 In China, private actors have brought two different types of lawsuit. The first is brought against government agencies for failing to act, whereas the second includes lawsuits brought against other individuals or private entities. About this point, see L. Jiangfeng, *Climate change litigation: a promising pathway to climate justice in China?*, in *Virginia Environmental Law Journal*, Vol. 37, No. 2 (2019), 149.

87 C. X. Lin, *A Quiet Revolution: An Overview of China's Judicial Reform*, in *Asian-Pacific law & Policy journal,* Vol. 4, Issue 2, 2003, 275. Indeed, as argued by Li, the relationship between courts and people's congresses can be summarized by the fact that «people's congresses appoint and dismiss presidents and judges of courts at the corresponding level; and they supervise the implementation of law by courts». See, also, Y. Li, *Judicial Independence in China: An Attainable Principle?,* Eleven International Publishing, 2012, 24.

88 As noted by Peerenboom, the Communist Chinese Party «influences the courts in various ways and through various channels". Moreover, the Chinese Communist Party can have a direct interference in the courts' handling of specific cases also through the Central Political and Legal Affairs Commission of the Communist Party of China, the organization under the Central Committee of the Chinese Communist Party (CCP) responsible for political and legal affairs. In practice the organization oversees all legal enforcement authorities, including the police force». See, R. Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions,* in Peerenboom (ed), *Judicial Independence in China* (n 12), (2008), 79.

89 See Y. Zhao, S. Liu and Z. Wang, cit., 365

90 More details are contained in the Judges Law of China enacted in 1995 and amended in 2001. The full text of the Judges Law is available at http://www.npc.gov.cn/englishnpc/c23934/202012/9c82d5dbefbc4ffa98f3dd815af62dfb.shtml.

91 They have minimum protection of judicial independence in the Constitution, of which Article 126 provides that «[T]he people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to

because «the laws do not explicitly exclude interferences by the [CCP], from the legislative organs, or from higher courts»[92].

The Supreme People's Court itself[93], indeed, through its opinions, by setting new legal rules thus signaling the evolution of judicial policy[94], directs the lower courts while, at the same time, 'making law', supports government initiatives[95]. The Supreme People's Court, embarking on a guiding case system in the judiciary[96], shifts the focus from political regime to judicial review with 'Supreme Court-centered'[97] and finally to «political constitutionalism with Chinese characteristics»[98]. The Supreme People's Court is not

interference by administrative organs, public organizations or individuals». About the relationship between de jure and de facto judicial independence, see J. Melton, T. Ginsburg, *Does De Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence,* in 2(2) *Journal of Law and Courts*, (2014), 187. According to these authors, article 126 only states that adjudication cannot be interfered with by administrative organs, public organizations and individuals and it is silent on whether the Chinese communist Party organs, the people's congresses, and the procuracy can interfere with adjudication.

92 See Y Li, *Judicial Independence: Applying International Minimum Standards to Chinese Law and Practice,* in *China Information,* (2001), 15.

93 Despite having adopted 'Opinion of the Supreme People's Court on Deepening Reform of the People's Courts Comprehensively: Outline of the Fourth Five-year Reform of the People's Courts (2014–2018)' (Available at https://www.chinalawtranslate.com/court-reform-plan/?lang=en) that in the preface to Part III, provides: «Establishing an Socialist operation system with Chinese characteristics for the adjudication power requires starting from maintaining the unity of the nations' laws (…), explore establishing a judicial jurisdiction system that ensures the people's courts lawful, independent and just exercise of the adjudication power. By the end of 2017, have the preliminary form of a judicial jurisdiction system that is scientific and rational, connected and orderly and ensures justice». See, about, L. Feng, *The Future of Judicial Independence in China*, in H. P. Lee, M. Pittard (ed. by), *Asia-Pacific Judiciaries: Independence, Impartiality and Integrity*, Cambridge, (2017), 92.

94 Indeed, China, in recent years with the trend to incorporate common law elements into both legislation and judicial practice, has seen the Supreme People's Court, taking as an example the judicial review of the U.S. Supreme Court, go an important transformation. See, about this point, M. Jia, *Chinese Common Law? Guiding Cases and Judicial Reform,* in *Harvard Law Review*, Vol. 129, No. 8, June 10, 2016, 2213, Available at SSRN: https://ssrn.com/abstract=2793857. Indeed, on November 26th, 2010, the SPC's Adjudication Committee issued 'the Provisions of the Supreme People's Court Concerning Work on Case Guidance' (Provisions), while later, in 2015, the SPC issued clarifying regulations (Rules): according to this document, the ultimate goal of the use of guiding cases is to make attainable «the uniformity of application of law» – with compulsory reference - and the «achievement of judicial justice». See eg, P. Yu, S. Gurgel, *Stare Decisis in China? The Newly Enacted Guiding Case System* in M. Wan, (Eds), *Reading the Legal Case: Cross-Currents between Law and the Humanities,* 2012, 142; M. Zhang, *Pushing the Envelope: Application of Guiding Cases in Chinese Courts and Development of Case Law in China*, in *26 WASH. INT'L L.J.*, 2017, 269. Available at: https://digitalcommons.law.uw.edu/wilj/vol26/iss2/5

95 So, S. Finder, *How the Supreme People's Court Serves National Strategy and 'Makes Law': The Pilot FTZ Opinion and its Implications,* in J. Chaisse, J. Hu, (Eds), *International Economic Law and the Challenges of the Free Zones Kluwer Law International*, April 19, 2019, 296, Available at SSRN: https://ssrn.com/abstract=3374958.

96 On November 26th, 2010, the SPC's Adjudication Committee issued 'The Provisions of the Supreme People's Court Concerning Work on Case Guidance' (Provisions), while later, in 2015, the SPC issued clarifying regulations (Rules): according to this document, the ultimate goal of the use of guiding cases is to make attainable «the uniformity of application of law» – with compulsory reference - and the «achievement of judicial justice». See eg P. Yu, S. Gurgel, *Stare Decisis in China? The Newly Enacted Guiding Case System* in M. Wan, (Eds), *Reading the Legal Case: Cross-Currents between Law and the Humanities,* 2012, 142; M. Zhang, *Pushing the Envelope: Application of Guiding Cases in Chinese Courts and Development of Case Law in China*, in *26 WASH. INT'L L.J.*, 2017, 269. Available at: https://digitalcommons.law.uw.edu/wilj/vol26/iss2/5

97 See, L. Han, *Regime-Centered and Court-Centered Understandings: the Reception of American Constitutional Law in Contemporary China*, in *Am. Journal Comp. law*, 2020. Available at SRN: https://ssrn.com/abstract=2858253.

98 A. H.Y. Chen, *The Discourse of Political Constitutionalism in Contemporary China: Gao Quanxi's Studies on China's Political Constitution,* in *China Review*, vol. 14, no. 2, 2014, 183–214.

however an autonomous organism: China's Constitutional text expressly provides that all power is unified in the National People's Congress which supervises the Supreme People's Court, the Supreme People's Procuratorate, and the State Council[99] whereas the legislature is strongly conditioned by the dominant Party. Considering the limited power of Chinese courts and the power of the Chinese government, «the prospects for successful Climate change litigation against the government are very remote»[100].

Ultimately, in responding to the initial question if courts are able to influence regulation by the legislature, it needs thus consider the precondition that Chinese courts, in contrast to the court-driven regulatory policy-making process that is found especially in the Pakistan and Philippines, have only a secondary and supporting governmental policy role[101]: consequently, this is our conclusion, it seems difficult that litigation can push for greater change in tort-based Climate change litigation if Chinese government policy not will encourage judges to go in this direction.

It is also unlikely to have litigation against the Chinese government, in which citizens establish that their government has a legal duty to prevent dangerous climate change, like in the first case in the world, the Urgenda case. At this moment the Supreme Court proclaims, in its 2019 White Paper[102], that it needs to «strengthen the trial of climate change mitigation cases» and «proceed through cases to promote the reduction or avoidance of greenhouse gas emissions in areas such as renewable energy, energy efficiency, sustainable transportation, ozone-depleting substance control, land-use change, and forestry management».

In this sense, if it is true that in China, to date, there is no record of tort-based Change climate, less than ever brought against the government, and so specific case law, Chinese courts have a good potential to

[99] Article 67 of Constitution provides that «The Standing Committee of the National People's Congress exercises the following functions and powers: (6) to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate». Moreover, the Supreme People's Court is required to «submit a work report to the National People's Congress for review» once every year. See, about, R. Peerenboom, *Judicial Independence in China,* cit., 81.

[100] M. Wilensky, *Climate Change in the Courts: An Assessment of Non-U.S. Climate Litigation,* in *Duke Environmental Law & Policy Forum*, (2015), 131–79.

[101] J. Peel, H.M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*, Cambridge University Press (2015), 63.

[102] The Supreme People's Court released, on May 8, 2020, the 'China Environmental Resources Trial (2019)' (White Paper), available at https://www.court.gov.cn/zixun-xiangqing-228341.html. With this document, the Supreme Court wants «Improve the level of judicial protection and respond to the diverse judicial needs of the people. (...) Deepen public participation, actively accept the supervision of representative committee members, promote judicial openness through various methods such as court hearings, publishing white papers and typical cases, strictly implement the people's jury system, and maximize the public's right to know, participate, and supervise». Moreover, this is the first time that the Supreme People's Court has released the annual typical case of environmental resources, covering five major types of cases such as environmental pollution prevention, ecological protection, resource development and utilization, climate change response, and environmental governance and services. Among them, there are the first charitable trusts in China. The mechanism introduces environmental civil public interest litigation cases in the public interest litigation fund management system, and the first environmental administrative public interest litigation case in China aimed at protecting traditional villages. See, Z. Chen, *Addressing Dilemmas Over Climate Change Litigation in China*, in *Hong Kong L.J.,* (2019), 719.

safeguard the social public interests, also through Environmental Public interest cases targeting carbon emitters directly if - obviously - government policies promote better air pollution control[103].

[103] Y. Zhao, S. Liu and Z. Wang, cit., 377.