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The Function and Practice of the Green Principle of Chinese Civil Code

Green Principle is the summary to the 9th article of the GPCL of the PRC. It is not only an important legislation in response to the deterioration of resources and environment in the 21st century in Chinese Civil Code, but also an important innovation to the traditional civil law legal theories. *Green Principle* not only has the general function of the basic civil law principle, but also balances the interests between personal interests and public interests of environment protection as a restrictive basic principle. System construction of the *Green Principle*, which is fully and adequately throughout the civil legislation, is the important task of the branches of Chinese Civil Code.

Key words: civil code, Green principle, basic principle, branch of civil law

The article 9 of *General Principles of Civil Law of the People's Republic of China*(GPCL), which was formally implemented in October 1, 2017, stipulates that *when a civil subject engages in civil activities, he shall be conducive to saving resources and protecting the ecological environment*, and it is classified as *Green Principle*.²⁷⁷ There has always been controversial on the establishment of this article during the GPCL legislation. In consideration of the Standing Committee of the NPC about the establishment of this article, there were also different opinions. Scholars that argued deleting the Green Principle believed that the principle belonged to the *Environmental Protection Law* and it was some sense of being the basic principle of civil law, but there was doubt about how to express and how to practice this principle in the specific system of civil law. This article was deleted in the GPCL third draft, which was inspected by the Standing Committee of the NPC in December 2016. After social strong appeals, it was restored in the GPCL, which was submitted to the Fifth Session of the Twelfth National People's Congress for formal consideration and adoption in March 2017. Judging from the design of the Civil Code Division(Draft) issued in September 5, 2018, only the provisions on liability for damage to ecological environment of the tort more clearly responde to *Green Principle*, the property law simply duplicates the existed environmental protection clauses without any expansion and the contract law almost never refers to it. Under this background, it is necessary to clarify the basic understanding of the *Green Principle* and complete the civil legislation that can fully and adequately implement the *Green Principle*.

I the System and Orientation of the *Green Principle*

The Chapter 1 *Basic Provisions* of the GPCL contains 12 basic provisions, such as *equality, voluntariness, fairness, honesty, legality, green, public order and good custom*. They are united together and become a whole civil law principle system. The *Green Principle* is the basic civil law principle, that is, it is general (universally applicable) principle in the whole civil law, not a specific or concrete principle only adapting to the property law, tort, contract, marriage and family and succeeding, etc. The basic principle of the civil law is throughout the civil legislation, the legislative

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²⁷⁷ In different research papers, the name of this principle is different, such as *ecological principle, ecological environment protection principle, resources and environmental protection principle, green environmental protection principle, ecological civilization principle, resources and environmental protection principle and harmonious development principle between man and nature*.

guideline for the civil law system and the civil code, the code of conduct that all civil subjects should follow, the interpretation to the civil law and the base of supplementing legal gaps and developing jurisprudence cases. The basic principles of different Civil Codes are divided into 2 categories based on the nature. One is standard and basic civil principle that expresses the core concepts and values of civil law, which includes equality of subject status, autonomy of will and rights and interests protected by law. They are all based on the individual interest. The other is necessary limitation to the standard and basic civil principle, which balances and coordinates the core concepts and values of civil law and the social needs. It includes honesty, fairness and public order and good custom.²⁷⁸ *The Green Principle of GPCL is limitation principle. It reflects social needs together with fairness, honesty and uniform of the rights and obligations from different perspectives.*²⁷⁹ *It can balance the interest between civil subject and ecological environment. It is new expression and orientation of the socialization of the civil code.*²⁸⁰ After all, the problem of the *Green Principle* is important to law of ecological ethics. It is an important legislation of Chinese civil code in response to the deterioration of resources and environment in the 21st century. It is also an important innovation to the traditional civil law theory.

II the Function of the *Green Principle*

The *Green Principle* not only has the basic function of the general principle of civil law, but also makes the balance between personal interests and public interests of environmental protection.

In china, the function of the *Green Principle* are presented as below.

1) **Implement the ideal of green development in civil law and harmonize the economic development and environmental protection**

There has been great development and a series of remarkable achievements in Chinese economy since the reformation. However the environmental problems has become more serious with the economic development. China has gradually realized the importance of environmental governance in recent years. The goal of socialist modern construction has been changed into *prosperous and strong, democracy, civilization,harmony and beautiful*. The aim of *beautiful* is to emphasizes the concept of ecological civilization and implements the ideal of green development.

The Civil Code undertakes the important mission of promoting and guaranteeing *Green Development*. The legislation of *Green Principle* is to settle the conflicts between the needs of economic development and the needs of environmental protection. Although it regulates civil activities at first, the true aim is to achieve the unity balance between environmental public interests and the rights and interests of civil subjects. The conflicts between the environmental interests and the civil interests are the conflicts of the due interests raised by the rapid economic development and they cannot be settled simply by exclusion or some prior right. In other words, *Green Principle* makes use of the method of interests balance and determine the value in practice according to some pattern of optimal choice between different due interests. That is, create the win-win situation of

²⁷⁸See Feiyu, *Basic Civil Law Principle:Theoretic Rethinking and Code Expression*, Law Research,2016, Vol.3.

²⁷⁹ Weiqiu long, Baoyu liu, *Interpretation and Guideline to the GPCL of the PRC*, Chinese Legislation Press, 2017, p34.

²⁸⁰ Weiqiu long, Baoyu liu, *Interpretation and Guideline to the GPCL of the PRC*, Chinese Legislation Press, 2017, p68.

coexistence of private maximization of interests and minimization of damage to the environmental public interests.

2) embody the value of ecological security and coordinate the relationship between transaction security and ecological security in the civil law

In modern civil law, security is an important value. However, there is more consideration about transaction security or economic security than ecological security, which is not considered at all. Ecological security refers to the health and integrity of ecosystems, and it reflects the protection level of human being's production, life and health from the damage to ecosystem and environmental pollution. The basic conditions for human survival will be threatened and destroyed and economic security will be impossible without ecological security. It is necessary to establish an entire and comprehensive control system to ensure ecological security based on the nation security, national security and sustainable development. According to the object of regulation of Civil Law, the civil law regulates the property relationship and personal relationship between equal subjects. The property relationship reflects the problems between human being and the resources. When the resources is insufficient and the demand is expanding, it will inevitably lead to resource shortage. Competition for limited resources may lead to conflicts, even social shock, which will lead to the disappearance of transaction security. The environmental problems are directly related to the economic activities of human being and some small transactions are likely to lead to big environmental problems. It is essential and necessary to emphasize the value of ecological security and balance the interests between transaction security and ecological security.

3) establish the development view of ecological civilization in the civil law and harmonize the intra generation equity and the intergenerational equity

Ecological civilization is the foundation and power of all civilization development. The social economic development should take adapting to ecology into consideration and it is rational. Now the dualism of subject and object still plays an important role in the research of civil law. Human being is the core of all and people oriented, emphasis on the private interest, the traditional view of material development, the reason of economic man, nature being object are the expression of anthropocentrism economic ethics. *Green Principle* is based on the theory of maintaining and developing shared economy and ecological civilization and the operative norm of harmony between man and nature. The economic man should be endowed with ecological reason by the Civil Code and private activities should be bounded by environmental fair and justice. Present civil activities not only meet the various needs of mankind, but also make the individual fully development without damage to the survival and development of future generations. Civil subjects should develop thinking pattern as an ecological man, practise civil rights in the normal form of environment protection and saving resources and undertake corresponding social obligations or responsibilities for their actions affecting the environment. So that there won't be irreversible damage to environmental resources by the production and life of the contemporary and the natural conditions for future generations to survive and develop will be conserved.

In conclusion, *Green Principle* is an important innovation and creation in the legislation of Chinese civil code and it has special function. It plays great significance in Chienese economic reformation and construction of ecological civilization as a restrictive basic principle.

III the System Implementation of *Green Principle* in the Civil Code

It is obviously that *Green Principle* is the basic design on the environmental protection obligations of civil subjects. *However, the life of law is never based on logic, but on experience. Green Principle* is not consisted of logic closely rules of behaviour and judgement as a general article and it is difficult to have legal effect. Only combined with other articles can it own the legislation power.²⁸¹

1) *Green Principle* in the Legislation of the Property Law

Establish environmental protection principle in the practice of real rights. In the light of the fact that to some extent the environmental crisis is largely due to the traditional property rights principle, such as ownership, the contents of environmental protection requirements should be clearly stipulated in the basic exercising principles. It is the inherent requirement of the green civil law in the new era.

Carry out green alteration in traditional property rights system such as neighboring relations and easement. The environmental rights and interests of civil subjects are mainly based on the use of real estate and the indirect protection of ecological environment can be realized to a great extent by recognizing and protecting the related environmental interests in the use of real estate. The property law has followed this, but there is still insufficient in the scope and protection. Corresponding improvements should be made. For example, expand the protection scope of neighboring relations by increasing the rights of view and protection against light pollution based on the existed legislation of ventilation, daylighting and sunshine. Clear the goal of creation of easement to improve the efficiency of real estate and the environmental protection.

Establish the system of *res communes*. *Res communes* mainly originated from ancient Rome law and was typically regulated in the French Civil Code. It means that not qualified majority can make nonexcludable use of thing. The green ideal of making best use of thing of open, share, environmental protection and economic can be realized by establishment of the Use Right System of *res communes*.

2) *Green Principle* in the Legislation of the Contract Law

Establish the Extended Producer Responsibility(EPR) of the producer. EPR and the meaning of preventable environmental protection strategy was firstly used and defined in the report presented to the Swedish Environment and Natural Resources Department by Thomas Lindhqvist in 1988.²⁸² In his opinion, the production responsibility of the producer should be extended and traditional government responsibilities should be converted into producer responsibilities. That is, the producer should be responsible for the effect on circumstances in the whole lifecycle of his product from the design, production to the end of consumption, especially the responsibility of the product take-back, recycling and disposal. In other words, it can be stipulated in the sales contract that products enrolled in the disposal catalogue of discarded products by the state should be taken back by the producer or salesman as a compulsory obligation. Pre charge system, deposit return system and other systems developed autonomously in the process of discarded products taken-back

²⁸¹ German Karl Larenz, *Legal Methodology*, Translated by Ai'e Chen, Commercial Press 2003, P. 44.

²⁸² Rossem, C.van, TOjo, N., Lindhqvist, T., *Extended Producer Responsibility: An examination of its on innovation and greening products*, Report commissioned by Greenpeace International, Friends of the Earth and the European Environmental Bureau(EEB), 2006, P. 1.

and normalized in the legislation of the producer responsibilities should be mandatory provisions as contract necessary articles. In the contract of agreement for work and machining, selection of materials for convenient take-back and recycling should be placed on the material selection or designer as a compulsory obligation together with no use of materials prohibited by the state. No exclusions on those obligations are allowed in the contract by parties.

Clear and definite environmental protection *accessio* obligation. Different choices in the contract performance can lead to different environmental effect. The performance should abide by the *Green Principle* and undertake *accessio* obligation under the abidance by law and respect to the autonomy of will. Saving resources and reducing pollution are the *accessio* obligation in contract performance. Parties should abide by the honesty principle and undertake the obligations of notice, assistance, secrecy, saving resources and reducing pollution according to the nature and goal of contract and trading custom.

3) *Green Principle* in the Legislation of the Tort Law

The 15th article of the tort law regulates 11 kinds of function of undertaking tort liability, but they do not protect the environmental interest directly. Object of relief of the tort law usually is the civil subject harmed by the activities of destroying ecology and environment pollution. That is, only after the personal right or the property right enroched and concrete damage measured is there direct relief. It means that the effect on the environment can be relieved in the same way, indirectly and partially. The tort law should more closely practise the *Green Principle* and expand the interest type of claiming for compensation for environmental damage, the relief scope of environmental tort and improve and perfect the system of compensation for environmental tort damages. There is responsibility for damage to ecological environment in the 7th chapter of the tort of the Civil Code Branch (Draft) and it is the concrete practice of the *Green Principle*.

IV Conclusion

The Civil Code undertakes the important mission of promoting and ensuring *Green Development* as an important base of socialist legal system with Chinese characteristics. As far as the civil law, which usually takes circumstances in terms of property view, pursues the maximum personal freedom and gets rid of all kinds of bound, is concerned, it is still a long way to go to adhere to the harmony of the man and nature and develop the green development and life. The *Green Principle* of GPCL is a good begining, but the practice is determined by the branches of the Civil Code.