



# Comparative Law Review

*Sustainability and Innovation:  
Perspectives of Comparative law*

*Sostenibilità e innovazione:  
prospettive di diritto comparato*

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## COMPARATIVE LAW REVIEW

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# ENVIRONMENTAL PROTECTION THROUGH THE GREEN PRINCIPLE IN THE CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA

*Davide Clementi\**

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*Environmental protection and sustainability have become among the main focal points of regulatory intervention by public authorities, including those of the People's Republic of China, which has rapidly evolved, in the past forty years, both the first country by output and by total carbon dioxide emission, with dire consequences on the environment and collective health.*

*Through the amalgamation of indigenous cultural elements and the rediscovery of some Marxist leitmotifs, the Chinese legislature has been adopting or amending laws and regulations to promote a "tighter system of environmental control" within the "socialist rule of law with Chinese characteristics" which is often marked by regulatory gaps and the structural problem of "publicizing private law".*

*Within this framework of normative attention to tackling climate degradation, the introduction into the Chinese Civil Code, which came into force in 2021, of provisions soon known as the "green principle" is worth noting.*

*This paper aims to propose a comparative and problematizing analysis of the green principle in the recent Chinese codification, reconstructing, on the one hand, its value as a general regulatory principle of legal relations between parties and between parties and third parties, and on the other hand as an effective limitation on the bargaining autonomy of private parties. To assess the impact of the green principle, reflections in jurisprudence will be considered, including in light of China's emerging environmental doctrine.*

**Keywords:** People's Republic of China; Environmental Protection; Environmental Civil Law; Civil Code; Green Principle.

## I. INTRODUCTION: FROM THE *SICK MAN OF ASIA* TO THE *POLLUTED MAN OF ASIA*

Toward the end of the Second Opium War (1856-1860), Western powers began to affix the defeated and gunboat-bent imperial Qing China with the ignominious epithet of *sick*

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*man of Asia*<sup>1</sup>. This nickname, which had also been embedded in the self-consciousness of the Chinese people and is now being harshly re-evaluated as part of the anti-colonialist critique of the «Century of National Humiliation» (*Bainian Guochi* 百年国耻)<sup>2</sup>, reflected European perceptions of standing before not only a decaying Empire with old-fashioned customs and fierce laws, but also a swarming populace with poor sanitation habits, promiscuous with the nature and its illnesses.

The improvement of public health, as well as the sanitation of Chinese cities, was among the first goals of Mao Zedong's New China, which had been weakened by the Second Sino-Japanese War (1937-1945) and the civil war against the Guomindang (1945-1949). The *Patriotic Health Campaign* (1952) became the first policy adopted by the Chinese Communist government that, albeit indirectly, impacted the environment in a public health and national security context<sup>3</sup>.

At the same time, the Communist Party of China (CPC), under the banner of *Mao Zedong Thought*, implemented vast economic programs aimed at rapidly catching Western standards of industrialization, which, when not unsuccessful, nonetheless had extensive effects on the Nature, seen by Mao as something to «understand, overcome, and change»<sup>4</sup>. It was only in the height of the Cultural Revolution (1966-1976) that the Chinese government, especially in the first international *forum* devoted to environmental issues, began to value «the preservation and improvement of the human environment» as a «vital issue affecting the livelihood of the people and the economic development of all countries»<sup>5</sup>.

Following Mao's death (1976), the Party-State leadership set the People's Republic of China on the long and tumultuous path of breaking away from Maoist economic, social and legal policies to adopt those fall under the ideological banner of *Socialism with Chinese Characteristics* (*Zhongguo tese shehui zhuyi* 中国特色社会主义). In 1978, with the beginning

<sup>1</sup> See: Yi Hu, *The Double Meaning of "the Sick Man of East Asia" and China's Politics*. In: *Rural Health Care Delivery*. Berlin-Heidelberg: Social Sciences Academic Press (China) and Springer-Verlag, 2013, 3-9

<sup>2</sup> Without wishing to embark here on daring historical reconstructions, see on the topic: R. Yang, *Imaging National Humiliation: 'Sick Man of East Asia'*. In: *Modern Chinese Intellectual and Cultural History*, vol. 1, 2005; Yi Hu, *A Farewell to the "Sick Man of East Asia": The Irony, Deconstruction, and Reshaping of the Metaphor*. In: *Rural Health Care Delivery*, 2013, 127-38.

<sup>3</sup> Cfr. Yang, Nianqun, *Disease Prevention, Social Mobilization and Spatial Politics: The Anti Germ-Warfare Incident of 1952 and the 'Patriotic Health Campaign'*. In: *The Chinese Historical Review*, vol. 11, no. 2, 2004, 155-182.

<sup>4</sup> Cf. Mao Zedong, *Agricultural Reclamation*, no. 6, 1966, p. 44 cited by P. Ho, *Mao's War against Nature? The Environmental Impact of the Grain-First Campaign in China*. In: *The China Journal*, No. 50, 2003, 37-59.

<sup>5</sup> Tang Ke, *China's Stand on the Question of Human Environment*. In: *Peking Review*, June 16, 1972. The speech reported therein was delivered at the UN Conference on the Human Environment, held in Stockholm June 5-16, 1972.

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of the *Reform and Opening up period* (*gaige kaifang* 改革开放), the central-planned economy was gradually replaced by a socialist market economy (*shehui zhuyi shichang jingji* 社会主义市场经济), paving the way for the abandonment of Maoist legal nihilism, the recognition of ownership states other than the political ones, and the attraction of foreign capitals and technologies.

While maintaining a firm grip on the commanding levers of political and economic structures, the CPC began to encourage technological exchanges, especially with Western countries, and a vibrant private sector, protected by a newfound «socialist legality» (*shehui zhuyi fazhi* 社会主义法治)<sup>6</sup>, all for the primary purpose of developing productive forces and thus making the PRC a modern socialist power.

Although the magnitude of PRC's economic growth is undeniable, at the same time the disastrous effects it has had on nature, ecosystems, and the quality of life and health in world's most populous country cannot be omitted<sup>7</sup>. China, factory of the world, fully integrated into global production and distribution chains, has become both the world's largest manufacturing power and the leading country in total greenhouse gas (GHG) emissions<sup>8</sup>, and the once *Sick Man of Asia* rapidly become the *Polluted Man of Asia*.

Not surprisingly, in those same years of strong economic expansion and re-establishment of the socialist legality through the adoption of laws and legal structures that could allow the operation of private and foreign market players, the Chinese legislature began to put in place a legal system for the protection of the environment. The purpose of this paper is to analyze the main changes in Chinese environmental law, with a particular focus on the adoption in 2021 of the first Civil Code of the People's Republic of China and the introduction of the *green principle* as a general principle of Chinese civil law.

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<sup>6</sup> According to the *Communique of the 3<sup>rd</sup> Plenary Session of the 11<sup>th</sup> Central Committee of the CPC*. In: *Beijing Review*, no. 2 (January 12, 1979) «It is imperative to strengthen the socialist legal system so that democracy is systematized and written into law [...] There must be laws for people to follow, these laws must be observed, their enforcement must be strict, and lawbreakers must be dealt with».

<sup>7</sup> Just to give an index of the serious consequences that the deterioration of air quality has had on the health of the Chinese, the presence of particulates in the air led to an excess of mortality of 30.8 million people in the twenty-year period 2000-2020, See: Fengchao Liang et al., *The 17-y spatiotemporal trend of PM2.5 and its mortality burden in China*. In: *Proceedings of the National Academy of Sciences*, vol. 117, no. 41, 2020, 25601-25608.

<sup>8</sup> European Commission, *Emission Database for Global Atmospheric Research (EDGAR)*, <http://edgar.jrc.ec.europa.eu/overview.php?v=CO2ts1990-2014&sort=des9> (accessed on 22 July 2022).

## II. PUBLIC INSTRUMENTS TO DISRUPT AND PROTECT THE ENVIRONMENT

### IN THE FIRST DECADES OF THE PEOPLE'S REPUBLIC OF CHINA

The seizure of power by the Communist Party after the defeat of the Guomindang resulted in an unprecedented step back in the modernization of the Chinese Legal System<sup>9</sup>. The radical thought of Mao Zedong and his fellow comrades also prevailed in the legal field, reflecting the primacy of the revolutionary political leadership before the institutions of the State and law. The dominance of this line of legal theory and praxis was epitomized by some policies that directly impacted on human and natural environments. This is the case of the central planning system of regulation of the economy, but, above all, of economic campaigns such as the *Great Leap Forward*.

To «overcome reactionary conservatism»<sup>10</sup>, the Maoist leadership thought it could replicate the collectivization of the agriculture even in the industry. On September 24, 1959, the *Regulation for Improving the Planning Control System* was jointly promulgated by the CPC Central Committee and the State Council<sup>11</sup>, mandating that more than 100 million peasants would be relocated and employed in redevelopment projects of agricultural areas and wastelands in order to build and operate «backyard steel furnaces» (*tufa liangang* 土法炼钢) that were supposed to lead China to surpass (*chaoyue* 超越) Great Britain in the production of steel<sup>12</sup>.

In just three years of the *Great Leap Forward*, the backyard steelmaking plan not only failed to catch Great Britain, but also produced massive environmental damages throughout China: to build and operate homemade steel mills, entire forests were chopped down, leading to mass erosion of lands. In order to supplant lands now dedicated to the steel industry, the orders given to the People's peasant communes were to use dense cropping and deep plowing techniques, which left even agricultural soils vulnerable to erosion. The combination of wicked agricultural techniques and industrial policies unable to balance production needs and environmental well-being has caused a very serious famine – also

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<sup>9</sup> With the complete abrogation and nullification of the previous legal system adopted by the Nationalists, the CCP agitated in ways quite equal to those seen during the French Revolution with the ancient regime or by the Bolsheviks with the Russian imperial legal system.

<sup>10</sup> People's Daily, September 10, 1958.

<sup>11</sup> See: Collection of Laws and Regulations of the People's Republic of China: July-December 1958 [*Zhonghua Renmin Gongheguo Fayuan Hubian* 中华人民共和国法规汇编: 1958年7月-12月], edited by the Legal Affairs Bureau of the State Council (Law Press, Beijing), 96-99.

<sup>12</sup> For an anatomy of the surpass theory in the history of the PRC, See: W. A. Callahan, *Surpass*. In: C. Sorace et al. (eds.), *Afterlives of Chinese Communism: Political Concepts from Mao to Xi*, ANU Press, 2019, 275-280.

recognized by the Communist leadership<sup>13</sup> – and environmental disasters, still completely underestimated and downplayed<sup>14</sup>.

The liquidation of the Party's faction loyal to the «primacy of politics over the State and the Law» in the upheavals of the Cultural Revolution and Mao's death paved the way to the promotion of a new economic developmental model, as well as major changes in the legal system: maintaining the structures of Socialist constitutions, which were essentially «action programmes to be translate into political practice»<sup>15</sup>, in 1978 the PRC enacted its third Constitutional charter, abrogating the one adopted during the «ten years of chaos»<sup>16</sup>. While perpetuating the technique of vast historical-programmatic preamble, in which the Party-State praised the role of «Chairman Mao Zedong», the guidance of his «Thought» (*sixiang* 思想), and even the «triumphant conclusion of the first Great Proletarian Cultural Revolution», the 1978 Constitution began to move away from Mao's economic, political, and ecological legacy<sup>17</sup>. It is precisely within the 1978 Constitution that the first traceable mention of an environmental legal awareness occurred: for the first time, the State is charged with «protecting the environment and natural resources and preventing and eliminating pollution and other hazards to the public»<sup>18</sup>. While it was not a fortuity that this provision was enshrined into an Article which stated in the opening paragraph that the goal of the State is to achieve «greater, faster, better and more economical results» and

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<sup>13</sup> During the *Seven Thousand Cadres Conference* (*Qiqian ren dahui* 七千人大会) Mao himself underwent into a process of deep self-criticism, focusing on the issues of the Great Leap Forward which resulted in a limited period of economic policy change under the joint leadership of Liu Shaoqi and Deng Xiaoping.

<sup>14</sup> To an in-depth analysis of the consequences of the *Great Leap Forward*, See: D. Bachman, *Bureaucracy, Economy, and Leadership in China: The Institutional Origins of the Great Leap Forward*. Cambridge: Cambridge University Press, 1991; F. Dikötter, J. Wagner Givens, *Mao's Great Famine: The History of China's Most Devastating Catastrophe 1958-62*, London: Macat Library, 2017; Wei Li, Tao Yang, D., *The Great Leap Forward: Anatomy of a Central Planning Disaster*. In: *Journal of Political Economy*, vol. 113, no. 4, 2005, 840–77.

<sup>15</sup> K. Lowenstein, *Constitutions and Constitutional Law in the West and in the East*, In: *The Indian Journal of Political Science*, vol. 30, no. 3, 1968, 233, where the Author assesses that the functions of Socialist Constitutions are not merely the frame for the operation, by government, parliament, political parties, of the political process» but, *inter alia*, «they are instruments enjoining the actual power-holders to pursue the Socialist course and to implement the Socialist premises».

<sup>16</sup> 1978 Constitution of the People's Republic of China [*Zhonghua Renmin Gongheguo Xianfa* 中华人民共和国宪法], adopted at the 1st meeting of the of the 5<sup>th</sup> National People's Congress (hereinafter 'NPC') on March 5, 1978, and hereinafter referred to "1978 Constitution". See: K. Chin, T. G. Kearley, *The 1978 Constitution of the People's Republic of China*. In: *Hastings International and Comparative Law Review*, vol. 2 no. 2, 1979, 251-279.

<sup>17</sup> Mao's legacy on the environment has been described as "depressing" and of such magnitude to be "quite considerable" in term of "potential for further accelerated environmental degradation", See: V. Smil, *The Bad Earth: Environmental Degradation in China*, New York, M.E. Sharpe, 1984.

<sup>18</sup> Article 11, par. 3, 1978 Constitution.

to «continuously develop the productive forces»<sup>19</sup>, it also served as the legal basis for the enactment of the first environmental protection law of the People's Republic of China<sup>20</sup>, adopted in 1979, which could be signaled as the *Generation Zero* of China's Environmental Legal System. The 1979 EPL outlined a definition of environment (*huanjing* 环境) which encompassed but was not limited to «the atmosphere, water, land, minerals, forests, grasslands, wild animals, wild plants, aquatic organisms, scenic spots, scenic spots, hot springs, recuperation areas, nature reserves, living and residential areas»<sup>21</sup>.

The 法意 (*Fa Yi, the spirit of the Law*)<sup>22</sup> of the 1979 EPL reflects the spirit of a time in transition from a central planned economy toward a socialist, market-oriented one, still dominated by the urgent need to «ensure the rational use of the natural environment [...] and promote economic development in the socialist modernization»<sup>23</sup>. If the anthropocentric and productive-driven approach is evident already in the very opening of the law, it becomes crystal-clear when the 1979 EPL draws environmental protection plans subject to the principle of «turning harm into profit» (*hua hai wei li* 化害为利). In the same year, a law on forestry was also adopted by the Chinese legislative body<sup>24</sup> «principally for economic reasons»<sup>25</sup>.

Following the technique of the Forestry Law – which essentially targeted one environmental-related section or issue – a first generation of more precise but still vague and exhortative laws began to be adopted by China's legislative bodies<sup>26</sup>. All these laws

<sup>19</sup> Article 11, par. 1, 1978 Constitution.

<sup>20</sup> Environmental Protection Law of the People's Republic of China (for Trial Implementation) [Zhonghua Renmin Gongheguo Huanjing Baohu Fa (shixing) 中华人民共和国环境保护法 (试行)] adopted at the 11th session of the Standing Committee (hereinafter 'SC') of the 5th NPC with Order no. 2, on September 13, 1979, and hereinafter referred as "1979 EPL". Cf. Article 1, which states that the 1979 EPL was "formulated in accordance with Article 11" of the 1978 PRC Constitution.

<sup>21</sup> Article 3, 1979 EPL.

<sup>22</sup> We are quoting herein the first translation of Montesquieu's "*De l'esprit des lois*" into Mandarin by Yan Fu (严复), who is considered the father of modern translation of Western Classics into Mandarin. To learn more about Yun Fa's translation of Montesquieu's *magnum opus*, See: Zhang Chiyuan, *The Chinese Montesquieu in Yan Fu's Translation of The Spirit of Laws*. In: F. Cui et al. (eds.), *Medio-translatology. News Frontiers in Translation Studies*. Singapore: Springer, 2022, 111-123.

<sup>23</sup> Article 2, 1979 EPL.

<sup>24</sup> Forestry Law of the People's Republic of China (for Trial Implementation) [Zhonghua Renmin Gongheguo Senlin Fa 中华人民共和国森林法 (试行)] adopted at the 6th session of the SC of the 5th NPC. In the same act, March 12 was declared as the "National Arbor Day".

<sup>25</sup> B. L. Ottley, C. Valauskas, *China's developing environmental law: policies, practices and legislation*. In: Boston College International and Comparative Law Review, vol. 6(1), 81-132.

<sup>26</sup> Marine Environment Protection Law (1982); Water Pollution and Prevention Law (1984); Grassland Law (1985); Mineral Resources Law (1986); Prevention and Control of Atmospheric Pollution Law (1987); Water Law (1988).

were marked by a strong reliance on administrative instruments typical of commanding political systems.

This body of laws eventually culminated in the EPL's exit from trial in December 1989, when the official Environmental Protection Law was promulgated<sup>27</sup>. The 1989 EPL revised even the definition of environment, which thereafter is also described as «the totality of various and artificially modified natural factors that affect the survival and development of human beings»<sup>28</sup>. The most productivist sounding provisions were scrapped and in their place precise obligations have arisen for the State to incorporate the environment in the formulation of five-year plans<sup>29</sup>, to set national environmental quality standards, and to create national and provincial supervisory and control departments<sup>30</sup>.

The only obligation (*dìwù* 义务) formulated inside the 1989 EPL is for units (*dānwèi* 单位)<sup>31</sup> and individuals, which, on the one hand, «must protect the environment», on the other hand, have the right (*quán* 权) to report on or file charges against other units or individuals causing pollution or damaging the environment. In any case, the 1989 version maintains the reward system already devised in the trial version of ten years earlier, which provides prizes for units and individuals who achieve «outstanding achievements in protecting and improving the environment».

Even though the Constitution adopted in 1982 made more explicit the obligation for the State to «protect and improve the living environment for the people and the ecological environment»<sup>32</sup>, also by preventing and controlling pollution and other public hazards, the 1989 EPL did not outline any single, explicit obligation for governmental agencies and State-owned enterprises (SOEs) to comply with 1989 EPL provisions.

In 1988, the institution of the National Environmental Protection Agency (NEPA), «in charge of policy analysis, developing and implementing regulations, and monitoring

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<sup>27</sup> Environmental Protection Law of the People's Republic of China [Zhonghua Renmin Gongheguo Huanjing Baohu Fa 中华人民共和国环境保护法] adopted at the 11<sup>th</sup> Session of the SC of the 7<sup>th</sup> NPC on December 26, 1989, and promulgated with Presidential Order No. 2, and hereinafter referred as “1989 EPL”.

<sup>28</sup> Art. 2, 1989 EPL.

<sup>29</sup> Art. 3, 1989 EPL.

<sup>30</sup> Artt. 10-15, 1989 EPL.

<sup>31</sup> Reference is made herein to: K. Lin, *Work Unit*. In: Sorace, C. et al. (eds.), *op.cit.*, 331-334.

<sup>32</sup> 1982 Constitution of the People's Republic of China [Zhonghua Renmin Gongheguo Xianfa 中华人民共和国宪法] adopted at the 5<sup>th</sup> Session of the 5<sup>th</sup> NPC on December 4, 1982, Article 26.

environmental management in the country»<sup>33</sup> indicated a new commitment of the PRC in the environmental law enforcement. Nonetheless, the process of sclerotization of the environmental regulation continued in the following decades, given the scarce engagement of China in the construction of a specialized and efficient *apparatus* responsible for multiple tasks solemnly proclaimed but not enforced by environmental regulators<sup>34</sup>.

### III. POLITICAL NORMATIVITY ON THE ENVIRONMENT FROM THE *MODERATELY PROSPEROUS SOCIETY* TO THE *ECOLOGICAL CIVILIZATION*

When Deng Xiaoping introduced market reforms in China, the CPC leadership began to emphasize the creation of a stable legal system to foster the building of a *Moderately Prosperous Society* (*xiaokang shehui* 小康社会). Rooted in the *Book of Rites*, one of the most famous Confucian classics compiled in the Han Dynasty, the concept of *Xiaokang* has been adapted to serve the will and propaganda of the Communist Party. Aware that in the late 70's China was not in a state of *Grand Unity*, or Confucian *Datong* (大同)<sup>35</sup>, comparable with Mao's achievement of communism, the People's Republic was then in a state of greater imperfection (or *Lesser Prosperity*, as *Xiaokang* is also translatable) where «[r]itual and righteousness are used to regulate the relationship between ruler and subject [...] to set up social institutions, organize the farms and villages, honor the brave and wise, and bring merit to the individual»<sup>36</sup>. Departing from the Confucian-Maoist *Datong* within the society, where there was no need for institutions, laws, and private property<sup>37</sup>, dengist leadership envisioned a socialist-oriented *Xiaokang*, where institutions and laws are needed to assist the quadruple modernization of China's economic structure.

Optimism on the «considerable potential» of market forces «to enhance the environment»<sup>38</sup> sparked in the late Eighties even among Western scholars, dazzled by the

<sup>33</sup> Li Chansheng, *China's Environment: A Special Report*. In: EPA Journal, vol. 15, no. 3, May/June 1989, 44-46.

<sup>34</sup> At the end of the Second Millennium, a new set of laws was enacted on solid waste (1995), environmental noise pollution (1996), and desertification (2001). See: E. W. Orts, *Environmental Law with Chinese Characteristics*. In: William & Mary Bill of Rights Journal, vol. 11(2), 2003, 545-567, where the Author lamented the danger “of having too many statutes and not enough wisdom”.

<sup>35</sup> A.H.Y. Chen, *The concept of 'Datong' in Chinese philosophy as an expression of the idea of the Common Good*. In: University of Hong Kong Faculty of Law Research Paper, No. 2011/020.

<sup>36</sup> W.T. De Bary, Chan Wing-tsit, Watson, B., *Sources of Chinese Tradition*, volume I. New York: Columbia University Press, 1960, 175-176.

<sup>37</sup> We are referring herein to late Confucian philosopher Kang Youwei's *Datong Shu*. For a comparative analysis of his thought, see: F. Brusadelli, *A Tale of Two Utopias: Kang Youwei's Communism, Mao Zedong's Classicism and the "Accommodating Look" of the Marxist Li Zehou*. In: *Asia Studies*, 1, 2015, 103-122.

<sup>38</sup> L. Ross, *Environmental Policy in China*, Bloomington, Indiana University Press, 1988, 1.

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extraordinary possibilities of growth and profits of a China still unable to manage a modern state apparatus and environment-efficient organs of supervision. The building of dengist *moderately prosperous society* came at the expense of the environment: despite the approval of that body of environmental laws discussed above, a serious, law-based enforcement lacked behind.

Marketization and liberalization continued to speed up their run, and so environmental disruption: in 2001 – the year that marked the supposed triumph of market forces and opening up with the China's Accession to the World Trade Organization (WTO) – China ranked 129<sup>o</sup> in the environmental sustainability index, and acid rainfalls interested more than a quarter of Chinese cities for more than 60% of rainy days per years, «making it among the world's most severely affected countries»<sup>39</sup>.

Starting from the Eleventh Five-Year Plan, China has begun to realize that the building of «*Xiaokang* in an all-round way» was in a «critical period» (*guanjian shiqi* 关键时期) due to «some endured deep level development-restricting contradictions» (*maodun* 矛盾), such as the lack of farmland, freshwater, energy insufficiency, the vulnerableness of the ecological environment, and aggravated pollution<sup>40</sup>.

At the peak of what seemed to lead China into the *fifth modernization*<sup>41</sup>, the Party-State continued to use typical public instruments, conceptualizing the quasi-ideal *Xiaokang* into political documents, official statements, economic and development plans, assessing again the socialist nature of the Chinese state and downgrading the normative power of *Xiaokang* in favour of a ductile, elastic slogan which self-influenced policymakers throughout all levels of China's administration, rather than private parties and judges.

A change in the course rapidly occurred with Xi Jinping's rise to power (2012-2013). Since its early stage, Xi's leadership has been posing law (*fa* 法) as the main instrument to reaffirm the centrality of the Party's leadership in every corner of the Chinese society, creating a model of *authoritarian legality* that emanates from the Party – with himself at its

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<sup>39</sup> For an examination in a macro-economic perspective of Chinese level of air, land, soil, and water pollution in the first decade of the New Millennium, See: J. Liu, J. Diamond, *China's environment in a globalizing world*. In: *Nature*, vol. 435, 2005, 1179–1186.

<sup>40</sup> Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development, approved at the 4<sup>th</sup> Session of the 10<sup>th</sup> NPC on March 14, 2006. An outline of its environmental focus is available at: Cao Jing et al., *China's 11<sup>th</sup> Five-Year Plan and the Environment. Reducing SO2 Emissions*. In: *Review of Environmental Economics and Policy*, vol. 3(2), 2009, 231-250.

<sup>41</sup> The «Fifth Modernization» indicated the democratization of the Chinese society as an eventual result of the previous four (agriculture, industry, national defense, science and technology).

core (*hexin* 核心) – and interferes with and against economic operators, public authorities, courtrooms, public international powers, and also nature<sup>42</sup>. The unbreakable bond between the instrumental use of the law and the politization of environmental protection has been hallmarked by the promotion of the concept of Ecological Civilization (*shengtai wenming* 生态文明), enshrined within the framework of Xi Jinping’s Thought on Socialism with Chinese Characteristics for the New Era, incorporated as guiding political and military ideology into the Constitutions of the Party and the State<sup>43</sup>.

Coined in mid 2000s during Hu Jintao’s presidential term, Ecological Civilization rose up as a Chinese alternative to Sustainable Development, view as an exogenous model of environmental protection<sup>44</sup> that interferes, rather than cooperates, with the evolutionary way of imaging and narrating human civilization. In this regard, Ecological Civilization represents the next stage of human development<sup>45</sup>, in which a people-centered (*yi ren wei ben* 以人为本) approach is realized within a landscape full of «green waters and clear mountains» (*liushui qingshan* 绿水青山) that provide full prosperity forever – or «gold and silver hills» (金山银山) – to the humankind<sup>46</sup>.

<sup>42</sup> Many scholars have been tracing a comparison between Xi Jinping’s Thought on Rule of Law (*Xi Jinping de Fazhi Sixiang* 习近平的法治思想) and the Legist School (法加), emphasizing the proto-totalitarian nature of the latter and the authoritarian use of law of the former. The latest analysis on such topic has been conducted by Wang Shucheng, *Authoritarian Legality and Legal Instrumentalism in China*. In: *The Chinese Journal of Comparative Law*, Vol. 10(1), 2022, 154-162, where the Author affirms that «authoritarian legality focuses primarily on the instrument – rather than transcendental – facets of law, as is reflected in the theory of legal instrumentalism», which «has some resonance with historical Chinese legal traditions [...] both [in] the Confucian School and the Legalist School». From the same Author, *Law as an Instrument. Sources of Chinese Law for Authoritarian Legality*, Cambridge: Cambridge University Press, 2022. In a more propagandist and historical perspective, we refer to Li Cunpeng, *Xi Jinping Thought on the Rule of Law is the essence of the times of Chinese culture and spirit*, 2022, available in the website of the Law Institute of China Law Society, 2022-05-12, where the Author pointed out that Xi Jinping’s Thought on Rule of Law stresses the link between the strength of the law makes the country strong, as it was for the legists during the Spring and Autumn Period and the Warring States Period.

<sup>43</sup> See: Constitution of the People’s Republic of China (1982), as amended at the 1<sup>st</sup> Session of the 13<sup>th</sup> NPC on March 11, 2018.

<sup>44</sup> The concept of Sustainable Development was adopted in: United Nations, *Our Common Future (Brundtland Report)*, from A/42/427, 1987 as a «process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs». Sustainable Development was also embodied in the China Agenda 21, adopted by the State Council in 1994.

<sup>45</sup> J.P.F. Oswald, *What Does Eco-Civilization 生态文明 Mean?*. In: *The China Story* (blog) 4 September 2014. <https://www.thechinastory.org/2014/09/what-does-eco-civilization-mean/>.

<sup>46</sup> Huang Haotao, *The rise of civilization follows the rise of ecological civilization. Systematically study the important discourse of Ecological Civilization by Party General Secretary Xi Jinping*. In: *Xuexi Shibao*, 3 March 2015.

Subsequent to the incorporation in the Party-State Constitutions, Ecological Civilization has been implemented into a broad range of laws, public instruments and institutions: since 2020, the reshuffled Ministry of Ecology and Environment (MEE)<sup>47</sup> has been conducting an *Ecological Civilization Construction Demonstration* project with more than 300 cases which serve to «deeply practice Xi Jinping Thought on Ecological Civilization»<sup>48</sup>; EPL and other environment-related laws and regulations was amended to include Ecological Civilization as the «*ratio legis*» according to which a specific law is formulated<sup>49</sup>.

#### IV. THE GREEN PRINCIPLE IN THE FIRST CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA

The paramount reflection of the normative power of the Ecological Civilization has to be searched into the first Civil Code adopted in 2020<sup>50</sup>. The CCC represents the ultimate stage in the modernization and accession of the Chinese Legal System into the Romano-Germanic legal *familia*, a process that is well rooted in time since the beginning of the Twentieth Century<sup>51</sup>. Indeed, from 1978 to 2014, a «*quasi civil code*» was experimented in mainland China: with the enactment of General Principles of Civil Law (GPCL) in 1986

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<sup>47</sup> The Ministry of Environmental Protection, which was the former State Environmental Protection Bureau, was renamed and empowered with additional tasks by the *Plan for Deepening the Reform of the Party and State Institution*, adopted by 1st Session of the 13<sup>th</sup> NPC on March 17, 2018, Point no. 2.

<sup>48</sup> For information purposes only, the first *demonstrative case*, dated 04/07/2020, was quoted therein. According to the information available at the MEE website, heated by «the goal of striving to create a national ecological civilization construction demonstration zone and creating a model area for practicing Xi Jinping Thought on Ecological Civilization», the Miyun District in Beijing was affected by «breakthroughs [...] in reform of the law enforcement system» through the implementation of a «comprehensive law enforcement brigade» with more than 220 law enforcement powers of various departments. See: *Green development demonstration case (1) | national ecological civilization construction demonstration city and county - Miyun District, Beijing*, available at [https://www.mee.gov.cn/ywgz/zrstbh/stwmsfcj/202004/t20200407\\_773240.shtml](https://www.mee.gov.cn/ywgz/zrstbh/stwmsfcj/202004/t20200407_773240.shtml).

<sup>49</sup> Law on Prevention and Control of Environmental Pollution by Solid Waste [Zhonghua Renmin Gongheguo Gutu Feiwu Wuran Huanjing Fangzhi Fa 中华人民共和国固体废物污染环境防治法], as amended at the 17<sup>th</sup> Session of the SC of the 13<sup>th</sup> NPC on April 29, 2020, which is formulated in order to «protect and improve the ecological environment [and to] advance the construction of the Ecological Civilization» (Article 1).

<sup>50</sup> Civil Code of the People's Republic of China [Zhonghua Renmin Gongheguo Minfa Dian 中华人民共和国民法典], adopted at the 3rd Session of the 13<sup>th</sup> NPC on May 28, 2020, and entered into force on January 1, 2021 (hereinafter 'CCC')

<sup>51</sup> Although the Chinese Legal System has a dating history in codifications, its process of opening up to Western Legal Traditions, and in particular to the continental one, dates back to «clash of civilizations» that took place in the Opium Wars and to the late *Draft of the civil laws of the great Qing dynasty (Da Qing minliu cao'an 大清民律草案)*, drawn up on the basis of the German Civil Code (Bürgerliches Gesetzbuch, abbreviated BGB) and jointly written by Chinese and Japanese jurists trained in the West [cfr. F. R. Antonelli, *Il processo di modernizzazione del diritto cinese*. In: M. Scarpari (ed.), *La Cina. Verso la Modernità*, Vol. III, Torino, Einaudi, 399-442].

and ordinary civil legislation that has now been absorbed into the CCC<sup>52</sup>, the PRC tried to set down a coherent and comprehensive body of laws that eventually would result in the adoption of a modern Civil Code. Only in 2021, after decades of transplantations, experimentations and hearings from jurists<sup>53</sup>, the NPC condensed a Civil Code which is the synthesis of the Chinese legal tradition, legal transplants from the West, and legal modernity, all within ideological corollaries of the Chinese political structure<sup>54</sup>.

Inside this «civil constitution of modern society»<sup>55</sup>, Ecological Civilization translated into the *Green Principle* (*lǜsè yuánzē* 绿色原则), thereof introduced in Article 9 CCC, which states that «[w]hen conducting a civil activity, a person of the civil law (*minshi zhuti* 民事主体) shall act in a manner that facilitates conservation of resources and protection of the ecological environment».

*Green Principle* originated in the initial first draft of the General Provisions of Civil Law as a basic principle of the civil code. The first draft, redacted by the China Law Society<sup>56</sup>, and the following one both included a neater Green Principle, rubricated as «principle of Harmonious Development between Man and Nature»<sup>57</sup>. However, the third official draft moved the *Green Principle* out from «Basis Principles» (*jiben yuánzē* 基本原则) to the ‘Civil Rights’ (*Minsbi quanli* 民事权利) Chapter, stating that «the parties in civil legal relations, when exercising civil rights, shall contribute to the conservation of resources and the protection of the ecological environment, promote Chinese culture, and realize core socialist values»<sup>58</sup>. It is perspicuous that, according to Article 133 (Third Draft), the political and nationalist nuances outpace the ecological stance, fading the Green Principle away in order to the mere moment of exercising civil rights. This move encountered the

<sup>52</sup> While declaring that the CCC shall come into force on January 1, 2021, Article 1260 CCC repealed all the existing civil laws adopted (Marriage Law; Succession Law; GPCL; Adoption Law; Security Law; Contract Law; Real Rights Law; Tort Liability Law; General Provisions of Civil Law).

<sup>53</sup> Cf. Wang Liming, *The Modernization of Chinese Civil Law over Four Decades*. In: *Frontier of Law in China*, vol. 14(1), 2019, 39-72.

<sup>54</sup> Cf. D. Alayew, *China's recent civil law codification in the High-Tech Era*. In: *Tsinghua China Law Review*, vol. 13(1), 2020, pp. 151, where reported that «the CPC declared the codification of the CCC an important step in Chinese people's pursuit of a better life, as well as in the promotion of socialism with Chinese characteristics for a new era».

<sup>55</sup> Huo Zhengxin, *China Enters an Era with a Civil Code*. In: China Justice Observer website, 29/05/2020.

<sup>56</sup> China Law Society, *The Civil Code of the People's Republic of China. Experts Proposal on the General Provisions of Civil Law*. Available online: [https://www.chinalaw.org.cn/Column/Column\\_View.aspx?ColumnID=81&InfoID=14364](https://www.chinalaw.org.cn/Column/Column_View.aspx?ColumnID=81&InfoID=14364).

<sup>57</sup> See: Article 8, *Expert Suggestions on General Provisions of Civil Law (draft for comments)*, redacted by the China Law Society in April 19, 2015.

<sup>58</sup> Article 133, *General Provisions of the Civil Law (Third review draft)*, adopted by the SC-NPC and published by Zhang Suhua, 《民法总则》建议稿. Beijing, Beijing Book Co.Inc., 2017, 304.

opposition of Chinese jurists sensitive to environmental issues, abetting the *Green Principle* as «the basic value orientation of the Civil Code, and more comprehensively reflects the guiding and normative role of the *Green Principle* in various fields of civil activities such as the exercise of civil rights by civil subjects, the performance of civil obligations and the assumption of civil liabilities»<sup>59</sup>.

The definitive approval of the CCC made undoubtable that the *Green Principle* surged as «basic principle» for the Chinese legislator, according to whom it is «compatible with the national conditions of China»<sup>60</sup> and adopted in order «implement Xi Jinping Thought on Ecological Civilization»<sup>61</sup>. While the CCC makes explicit its commitment to serve «the needs for developing Socialism with Chinese characteristics, and carrying forward core socialist values»<sup>62</sup>, it nevertheless enshrines in a prominent position other civil principles which govern civil law relations. If the principles of equality, voluntariness, fairness, honesty, and good faith (*chenxin yuanze* 诚信原则)<sup>63</sup> represent evidence of the dialogue between Western legal *familiae* and the Chinese Legal System, the *Green Principle*, posed on an equal basis of value and enforceability among others, is the sign of a juridic maturity reached by the civil legislator, capable to produce innovative expression of civil law modernity in line with the environmental upheavals of our time.

The CCC's *Green Principle* neglects a dating legal doctrine which pioneered the «greening» of civil law, which suggested to target with specific environmental provisions subjects of civil law, as well as objects of civil law and modes of interaction between subjects and objects<sup>64</sup>.

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<sup>59</sup> Wang Lei, quoted in Xing Bingyin, *Fourth Review of the draft General Provisions of the Civil Law: The 'Green Principle' deleted in the third draft is returned to basic principles*. In: The Paper website, 2017/03/09.

<sup>60</sup> Li Jianguo, *Explanation on the General Provisions of the Civil Law of the People's Republic of China (Draft)*, at the 5<sup>th</sup> Session of the 12<sup>th</sup> NPC on March 8, 2017, available at [ww.npc.gov.cn](http://ww.npc.gov.cn).

<sup>61</sup> Wang Chen, *Explanation on the Civil Code of the People's Republic of China (Draft)*, at the 3<sup>rd</sup> Session of the 13<sup>th</sup> NPC on May 22, 2020, available at [ww.npc.gov.cn](http://ww.npc.gov.cn).

<sup>62</sup> Article 1, CCC.

<sup>63</sup> Cf. Articles 3, 4, 5, 6, CCC.

<sup>64</sup> Reference is made herein specifically to Xu Guodong, an eminent Chinese jurist who also trained in Italy, who was among the first to envision a *green* Civil Code. See: Xu Guodong (eds.), *Green Civil Code (draft)*. Beijing, Social Science Literature Press, 2004, p. 7, where the A. defined the «green» as «the balance between man and resources, the description of the peaceful coexistence relationship between human beings and other living beings, and the expression of man's humble status». From the same A., See: Xu Guodong, *A serious analysis of the "Green" in the Green Civil Code (draft)*. In: Legal and Commercial Studies, No. 6, 2007 (hereinafter 'Xu's Green Civil Code'), where the A. stressed on the «channels of approach» (*fangshi de tujing* 方式的途径) even from an hermeneutical point of view (*jieshi xue* 解释学), but also on the importance of limiting subjects' (i.e. people) generation of desires that exceed the carrying capacity of resources, stating that the first and foremost legal way of applying green policy to civil law is to adopt a «green fertility principle», mandating the obligation for couples «to implement family planning». Secondly, a review of the standard of death must be conducted, shifting from the traditional cardiac and respiratory arrest to the «irreversible

Objects in particular are regulated within *iura in re*, designing a guiding, pre-eminent, proprietary role for the State and an ancillary, subsidiary remnant one for private individuals: the Civil Code affirms the State «encourages, supports, and guides the development of the non-public sector of the economy [...] consolidates and develops the public sector»<sup>65</sup>, which is the «mainstay»<sup>66</sup> (*zhubuti* 主体) of socialist economic systems.

Through the State Council, the State – «namely, the whole people», echoing a constitutional provision<sup>67</sup> - holds ownership rights over natural resources, mineral deposits, grasslands, waters, forests, radio-frequency spectrum resources, urban land, cultural relicts<sup>68</sup>. While it is unquestionable – also in the light of the constitutional provision that prescribes the impending obligation for the State to ensure the «rational use of natural resources» and the prohibition of their appropriation or damage «by whatever means»<sup>69</sup> – that the government continues to directly possess and use the vast majority of what is compassable under the definition of «environment» aforementioned in 2018 EPL, the CCC sanctioned specific obligations for owners of exclusive units of a building to «meet the requirements of conserving resources and protecting the ecological environment» when performing «relevant acts»<sup>70</sup>. Moreover, unit owners who impair the lawful rights and interests of others through acts against the environment such as discarding garbage or discharging pollutants or noises are subject to the right of owners' assembly or owners' committee to request the actor to discontinue such infringement, remove the nuisance, eliminate the danger, restore and compensate for the losses entailed<sup>71</sup>.

Given the peculiar property and ownership relations above indicated, usufructuary right has confirmed its centrality in the CCC. Described as «the right to possess, use, and benefit from the immovable or movable property owned by another person in accordance with law»<sup>72</sup>, even from natural resources owned by the State or used by collectives, the

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necrosis of brain tissue» (Article 12, Xu's Green Code); Thirdly, a clear compression on the exercise of real rights is operated in order to restrict behavioral capacity of subjects with «abnormal desire [to wasteful conducts]» (cf. Xu's Green Civil Code Articles 30, 35 and 208).

<sup>65</sup> Article 206, para. 2, CCC.

<sup>66</sup> Article 206, para. 1, CCC.

<sup>67</sup> Article 246, CCC, and Article 9, para. 1, 1982 Constitution (rev. 2018), which lists a series of natural resources which are constitutionally recognized as unalienable parts of State-owned properties.

<sup>68</sup> Cf. Articles 247-254, CCC. Natural and legal persons are under the obligation not to «misappropriate, loot, secretly distribute, intercept, or destroy» State-owned properties (Article 258 CCC).

<sup>69</sup> Cf. Article 9, para. 2, 1982 Constitution (rev. 2018).

<sup>70</sup> Article 286, para. 1, CCC.

<sup>71</sup> Article 286, para. 2, CCC.

<sup>72</sup> Article 323 CCC. There is no explicit provision that prescribes an economic destination obligation for the usufructuary, as in Article 981, Italian Civil Code.

usufructuary right, in addition to the obligation of conservation, protection and rational exploitation of the ecological environment<sup>73</sup>. The same provision is replicated for land use for real estate purposes<sup>74</sup>.

A dissemination of other Ecological Civilization provisions contributes to nourish the *Green Principle* in the Civil Code<sup>75</sup>. Reverberating the *Green Principle* as contemplated in the Third Draft it is prescribed a more peculiar obligation to perform any kind of contracts to avoid «wasting the resources, polluting the environment, and destroying the ecology»<sup>76</sup>. Confirming the obligation of environmental protection throughout the performance of contracts, there are specific provisions that, after the termination of claims and debts, parties shall pursue *bona fides* and abide to the obligation of recycling the used articles in line with trade practices<sup>77</sup>. Furthermore, the CCC stipulates for sales contracts that, after the expiration of an item's valid service time, the seller is under the obligation to recycle it by themselves or by an authorized third person, in accordance with the primary, secondary regulations or as agreed by the parties<sup>78</sup>.

Lastly, the 2020 Civil Code incorporates in Book VII on Tort Liability a specific Chapter dedicated to «Liability for Environmental Pollution and Ecological Damage», thus creating a mixed civil and public system of environmental protection<sup>79</sup>. Separate laws on

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<sup>73</sup> Article 326 CCC. Moreover, it could not be mentioned that Article 325 stipulates the creation of a «system of compensation for the use of natural resources». Such a system is already in operation in China: according to the latest estimates, State-owned land account for more than 520'000 million hectares, with more than 3'000 million hectares allocated in State-owned construction land. See: Lu Hao (Minister of Natural Resources), *Special Report of the State Council on the management of State-owned natural resources assets in 2020*, at the 31th Session of the 13<sup>th</sup> SC-NPC, October 21, 2021.

<sup>74</sup> It shall be remembered here that the CCC persists in Chapter XII to separate the ownership right of State over the land and the right to use such land to construct – over or under – buildings, structures, and auxiliary facilities. See: Shigang Li, *La loi de la République populaire de Chine sur les droits réels: principes fondamentaux et notions de base*. In: *Revue Internationale de droit compare*, vol. 61(1), 2009, 73-90.

<sup>75</sup> Cf. Lü Zhongmei, *The Typological Structure of Green Provisions of the Civil Code and its convergence with the Environmental Code*. In: *Journal of Administrative Law*, no. 2, 2022, where the A. distinguishes between four types of green clauses: harmonization clauses (or convergence clauses); restrictive clauses; incentive clauses; remedial clauses; and expansive clauses.

<sup>76</sup> Article 509, para. 3, CCC.

<sup>77</sup> Article 558 CCC, as translated by Chen Lei., *The Civil Code of the People's Republic of China: English Translation*, Brill, 2021, 204.

<sup>78</sup> Article 625 CC. Besides that, Article 619 mandates even that, where there is no agreement between the parties on the packaging method, the item, in the absence of a general way for packaging, shall be packaged in a way that is sufficient to protect it and conducive to save resources and protect the environment.

<sup>79</sup> A wide debate among scholars more attentive to environmental issues on the necessity to distinguish between a unitary civil system and a public system of environmental protection, or a mixture of the two. Some have argued that for maximizing the relief for damages to the ecological environment, it is necessary to combine both environmental and civil law through the improvement of the Tort Liability Section of Civil Law and inserting environmental fragments into the more traditional legal framework and logic of private law [See: N. A. Robinson, *Ecological Civilization and Legal Norms for resilient environmental governance*. In: *Chinese Journal of Environmental Law*, vol. 4(2), 2020, 131-161]. Some others have insisted on the irreconcilable

environmental protection have already given similar but distinguishing definitions of damage<sup>80</sup>, which encompass injuries to persons, property damages, and environmental damages. Article 1229 enlarged the once narrower definition given before the crystallization operated by the Civil Code, stating that environmental tort liability arises when, through environmental pollution and detriment to the ecological system, the tortfeasor causes damages to others. From the conjunct analysis of public and private statements, two types of ecological damages cause by pollution or ecological destruction exist: the first one is the «absolute ecological damage», i.e. the damage which causes partial or total disruption of ecological environments without directly affecting personal health or individual property rights; the second one is the «relative ecological damage», i.e. an ecological damage that, aside from a pure disruption, produces its bare effects even on personal lives and properties. The latter one is subject to the environmental civil interest litigation system as well as to the public litigation system.

The reversal of the burden of proof is disposed: firstly, tortfeasors must prove that they should not be liable or that their liability could be diminished in accordance to relevant laws, and secondly that there is no causation<sup>81</sup>. Lastly, what must be pointed out is that the Civil Code, reverberating what is already provided for by the Law on Civil Procedure<sup>82</sup>, does not give the injured person an explicit power to file a lawsuit. While natural and legal persons hold the legitimate right to file a lawsuit against a damaging act against their personality or their properties, the State has absolute centrality and discretion on bringing

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distinction between the damage to the ecological environment and the damage of private interests, which affects persons' private realm and conflicts with the public welfare and social nature of the ecological environment [See: D.S. Gangwar, S. Tyagi, S.K. Soni,, *A techno-economic analysis of digital agriculture services: an ecological approach toward green growth*. In International Journal of Environmental Science and Technology, vol. 19(5), 2021, 3859-3870]. As a final remark, it was advocated that since the civil tort liability system is insufficient to restore ecological damage, we should go beyond civil law concept and wisdom and make environmental law and civil law work synergistically [See: G.W. Dent, *Limited Liability in Environmental Law*. In: Case Western Reserve Faculty Publications, vol. 36, 1991, 151-182.

<sup>80</sup> *Id est*, Article 125 Air Pollution Prevention and Control Law (2018 Amendment) focus on the action of pollution («discharging of air pollutant which cause damages to the air»), rather than in a specific definition of air damage; Article 102 Water Pollution Prevention and Control Law defines water pollution as « the change of chemical, physical, biological, or radiological characteristics of water body due to the intervention of certain substances, thereby affecting the effective use of water, endangering human health or destroying the ecological environment, resulting in the deterioration of water quality»; In a very similar way to the last provision, Article 95 Marine Environmental Protection Law.

<sup>81</sup> Article 1230 CCC.

<sup>82</sup> Article 55, Law on Civil Procedure, stipulates that only «legal designated institutions and relevant organizations» may initiative a proceeding against acts jeopardizing public interests such as causing pollution to the environment or damaging the legitimate rights or interests of consumers at large. Moreover, the people's procuratorate could file an action to the People's Court when it finds any act that does harm to the protection of the environment and resources and when there is no organ or institution (or the organ/institution does not want) to file a lawsuit.

tortfeasors in front of People's tribunals: authorized governmental agencies or organizations authorized by the law have the right to request restoration within a reasonable period of time and to initiate the restoration process by themselves or by entrusting a third party at the expenses of the tortfeasor<sup>83</sup>. The State and relevant organizations also have the power to seek compensation for a series of losses enumerated by Article 1235, such as losses of service function during the period of time in which the effects of the damage take place<sup>84</sup>. The damaged person (*bei qinguan ren* 被侵权人) could only ask for the corresponding punitive damages (*chengfaxing peicheng* 惩罚性赔偿) or for compensation against the tortfeasor or a third party which by fault polluted or harmed the environment<sup>85</sup>.

#### V. CONCLUSIONS: GREENING THE CIVIL LAW, OR THE UMPTIETH ATTEMPT OF SOCIALIZING CIVIL LAW?

As we tried to delineate in previous paragraphs, the People's Republic of China has been undergoing into a deep process of greening (*libhua* 绿化) not only its public instruments, but even its new and late civil monument. While the Civil Code is recent and its passages from the *book* to the *action* are still underway, some conclusive remarks could be considered.

Firstly, the Civil Code posed the *Green Principle* in an outstanding rank among the other basic civil law principles. It not only serves as basis for value determination of civil cases, but, above all, could be seen as a general principle of the legal system, given the fact that it has been described by relevant scholars and judicial doctrine as a «loophole filling» principle with normative interpretation and selection functions<sup>86</sup>. The *Green Principle* has been applied even in the field of real rights, manifesting a tendency to expand its range of application while limiting ownership, possession, and use of properties<sup>87</sup>.

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<sup>83</sup> Article 1234 CCC.

<sup>84</sup> Article 1235, para 1(1) CCC, which also prescribes compensation for (2) permanent damage; (3) expenses for investigation, appraisal, and assessment of the damage; (4) expenses of pollution removal and ecological remediation; (5) reasonable expenses incurred to prevent the occurrence and aggravation of damage.

<sup>85</sup> Cf. Articles 1232-1233 CCC.

<sup>86</sup> In this term, See: Zhu Xiao, *On the Normative Interpretation of the Green Principle and Judicial Application*. In: Chinese Journal of Jurisprudence, No. 4, 2021. From the same A., Zhu Xiao, *Green Principle Normative Interpretation of Actual Case Interpretation*. Beijing: China University Press, 2022, 120.

<sup>87</sup> In [(2018) 沪民初 3616 号] *Liu Li v. Shanghai Jing'an District Yijing Yuan Owners' Association*, the plaintiff installed clean energy vehicle charging piles in the underground garage of the community, and the defendant

Secondly, even contractual autonomy has been influenced by elements that constitute binding contractual green clauses<sup>88</sup>, causing in the end a restriction of the concept of freedom of contract recognized by the Code itself. Already in the first stages of crystallization of civil law, mandatory green clauses have been used in the legal praxis as the basis for determining the voidness of contracts in contrast with national public and social interests<sup>89</sup>.

Thirdly, according to the relevant provisions of the Civil Code, environmental pollution liability is included in the category of tort liability types. Including environmental pollution-related torts in the normative system of tort liability will undoubtedly play a huge role in promoting the development of civil judicial practice. Combined with the application of the *Green Principle* in tort liabilities, the responsibility for environmental pollution should be strengthened. At the same time, environmental rights, as a basic right, also have certain private conduct. Incorporating environmental rights into the field of civil rights and interests and taking environmental rights as part of the implementation of the *Green Principle* in the tort liability section of the Civil Code, can form a spontaneous supervision and prosecution system.

Lastly, it cannot be diminished the double helix that is complementarily constituted by the political ground base and the *Green Principle*. Having started from a perspective which primarily put profit before nature, since the introduction of Ecological Civilization into the public discourse, and the new emphasis posed on Common Prosperity (*gongtong fuyi*

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believed that the plaintiff's behavior would bring about inconvenience in management and potential safety hazards. On the focal issue of whether community owners have the right to install car charging piles in private parking spaces without permission, the court's conclusion is that providing convenience for new energy vehicles can promote resource conservation and promote ecological protection.

<sup>88</sup> Western legal science has not been exempt from the inclusion of environmental sustainability issues within the regulation of legal relationships between individuals. See: S. Landini, , *Clausole di sostenibilità nei contratti tra privati. Problemi e riflessioni*. In: Rassegna di Diritto Pubblico, vol. 2, 2015, 611-634, where the A. stated that «the principle of sustainability has found a particular application in the area of private law or those rules that they build within the framework of the autonomy recognized by the legal system» and environmental indexes, once penetrated in the language of contract law, serve as a tool for giving objectivity to an often-abstract concept. From French scholars, it must be signaled Lequet, P., *L'ordre public environmental et le contrat de droit privé*. LGDJ, 2022.

<sup>89</sup> For example, in a civil dispute in Jilin Province, the plaintiff and the defendant signed a land contract management contract, but due to the government's policy of "returning farmland to grassland", the nature of the land in the contract was grassland, and continued cultivation was not in line with the state Regulations and contrary to national interests, therefore the contract was determined to be invalid. [See: (2018 吉民初 5483 号, *Liu Gui v. Liu Zhengfeng on Subcontracting of Land Contract Management Rights*] Another example is the case of a service contract dispute between a technology company and a catering company in Guiyang. The plaintiff and the defendant reached an agreement on the collection and transportation of waste oil and other solid waste, but violated the state's mandatory garbage classification and separate disposal, damage to the sustainable development of environmental resources and other major public interests and is invalid [See: (2018) 黔民终 5662 号, *Guiyang Belland Technology v. Tricon Global Restaurants on Service Contract Dispute*].

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共同富裕)<sup>90</sup>, the Chinese Legal System is undergoing a process of turning red into green (*hua hong wei li* 化红为绿) but also green into red (*hua li wei hong* 化绿为红). While a turn back to old-fashioned socialism could be dismissed, the more tightening and centralizing control of the Party cannot, even over environmental policy, which now has in civil law a mechanism «superior to or at least necessary as a supplement to public enforcement»<sup>91</sup>. Due to an economic-political system that already confers powers and legitimacy in the hands of sole decision maker – the Communist Party – the introduction of public elements such as the *Green Principle* inside the collection of private rules and relations could deeply and mechanically influence the behaviors of natural persons and economic operators<sup>92</sup>, favoring both the environment and the tenure of the CPC. This ultimate «socialization of private law» could eventually be adopted on a much secure and law-based systems, without at the same time providing a new instrument of control and penetration into the spheres of autonomy of individuals.<sup>93</sup>

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<sup>90</sup> Cf. Xin Sun, *Decoding China's "Common Prosperity" Drive*. LAW IDEAS Strategic Update, April 2022, who argues that «common prosperity has more to do with centralising and strengthening the Party's economic control than improving the welfare system».

<sup>91</sup> Zhai Tiantian, Chang Yen-Chiang, *The Contribution of China's Civil Law to Sustainable Development: Progress and Prospects*. In: *Sustainability*, 11(1), 2019.

<sup>92</sup> An advanced study in such field was conducted and report in Arundati R., H. Tri Sutiono, I., Agus Suryono, *Effect of ecological awareness, personal norms and ecological attitude to conservation behavior*. In: *Proceedings on Engineering Sciences*, vol. 2(2), 2020, 187–196.

<sup>93</sup> On the latest developments on the field of comparative private law and green Civil Codes, see S. Lanni, *Greening the Civil Codes: Comparative Private Law and Environmental Protection*, London, Routledge, 2023.

