

# *Research on Judicial Application Dilemmas of the Green Principles in the Civil Code: Translated from 32 Legal Documents as Analytical Samples*

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**Abstract:** In 2020, the Civil Code was enacted, with the Green Principles established as a restrictive fundamental principle within it. The Green Principles, as stipulated in the Civil Code, not only establish the concept of ecological environmental protection but also establish environmental protection obligations for civil subjects, thus incorporating environmental rights into civil law, which is beneficial for safeguarding individuals' environmental interests. Through the analysis of over thirty legal documents, it was found that due to issues such as the unclear judicial application of key terms like "environment" and "resources" and the ambiguous scope of application of the Green Principles, there exists a dilemma in the judicial application of the Green Principles, resulting in insufficient discretionary power. Therefore, efforts should be made from both the perspective of interpretative theory and judicial theory to strengthen the interpretative principles of the Green Principles in civil law and enhance efforts towards judicialization of the Green Principles.

## 1. Introduction

### 1.1 Overview of Judicial Application of the Green Principles

In judicial practice, judges' adoption of the green principle helps balance the environmental public interests and the interests of civil subjects, so as to conduct a more appropriate trial. However, some scholars have pointed out that the judicial application of the green principle seems to be "thriving" and "innovative" on the surface, but in fact, it is chaotic and even astonishing<sup>[1]</sup>.

First, search for "civil case type" on the Judgment Online website, including the "green principle" in the full text, and analyze 185 documents of "judgment year 2022". The statistics are as of Thursday, November 3, 2022. The application of the green principle is statistically analyzed from multiple levels such as geographical distribution, civil causes of action, court hierarchy, and trial procedures. The specific situation is detailed in the following content. Secondly, taking the court hierarchy as the screening condition, 32 cases (including 3 labor dispute cases with different cases but the same judgment) are selected as analysis samples for specific analysis, in order to make efforts to optimize the judicial application of the green principle.

Firstly, regarding the number of cases, courts across 25 provinces, autonomous regions, and municipalities in China applied the "green principle" during civil trials. Among these, Shandong Province had the highest number with 49 cases. The lowest number of cases, with only 1 each, were reported in Tianjin, Hubei, and Guizhou provinces/municipalities. Secondly, the cases in this sample are broadly categorized into four types. The first category includes disputes over contracts, unjust enrichment, and management without cause, totaling 145 cases. Among these, disputes over management without cause and unjust enrichment have been reclassified as quasi-contract disputes. Contract disputes are primarily focused on sales contracts, lease contracts, commission contracts, service contracts, and construction contracts. The second category is property rights disputes, involving 29 cases, which mainly include disputes over the protection of property rights (22 cases), ownership disputes, and usufructuary rights disputes. The third category consists of labor disputes and personnel disputes, totaling 8 cases. The fourth category includes tort liability disputes, with 4 cases. Thirdly, among the 185 cases, 98 were heard by primary courts, 85 by intermediate courts, and 2 by high courts, accounting for 53%, 46%, and 1% of the cases, respectively.

Additionally, among the civil cases, there are 96 cases in the first instance of civil procedure, 86 in the second instance, and 3 under civil retrial supervision. In the 185 samples, civil judgment documents are primarily concentrated in the first and second instance procedures. Among them, there are 96 documents for the first instance procedure and 86 for the second instance procedure, with the green principle being more frequently applied in the second instance. There are 3 cases under civil trial supervision. The second instance procedure is gradually employing the green principle as boldly as the first instance procedure.

## 1.2 Citation Situation in 32 Legal Document Samples

### 1.2.1 Fields of Reasoning

In the 32 legal documents, 20 of them reasoned about the "green principle," mainly focusing on disputes regarding contracts, unjust management, and unjust enrichment, which account for 15 cases. Additionally, there is 1 case related to property rights disputes and 1 case related to tort liability disputes. There are 3 cases of labor disputes and personnel disputes, which are actually considered as one due to the principle of "similar cases being judged similarly." Apart from these documents, the remaining 12 texts simply reference the "green principle" by parties such as appellants, original defendants, retrial applicants, and respondents in civil matters, hence these 12 texts are not elaborated in detail here.

### 1.2.2 Reason situation

The green principle, as a basic principle of the Civil Code, cannot be directly applied in civil judgment documents without adequate reasoning (Zhu Huijun, 2020)<sup>[2]</sup>. Judicial reasoning is defined as the judge's explanation of the basis or reasons in the judgment or other judicial documents (Li Xueyao, Liu Zhuang, 2022)<sup>[3]</sup>. Through the analysis of 32 legal documents, there are 17 legal documents that provide reasoning for the green principle, including the civil judgment (2022) Lu 01 Min Zhong 6091 of Jinan Intermediate People's Court in Shandong Province, the civil judgment (2022) Gui 02 Min Zhong 380 of Liuzhou Intermediate People's Court in Guangxi Zhuang Autonomous Region, and the civil judgments (2022) Shan 07 Min Zhong 1292 and (2022) Shan 07 Min Zhong 1293 of Hanzhong Intermediate People's Court in Shaanxi Province, as well as the civil judgment (2022) Ji 03 Min Zhong 355 of Siping Intermediate People's Court in Jilin Province. In addition, the first-instance courts and second-instance courts often simply cite the "green principle" and "Article 9 of the Civil Code" with just a few words to provide reasoning.

### 1.2.3 Form of reasoning

There is a situation of bundled citations of two basic principles in the reasoning process, such as "green and fairness principles" in the civil judgments (2022) Lu 02 Min Zhong 2680 of Qingdao Intermediate People's Court in Shandong Province and (2022) Wan 08 Min Zhong 1116 of Anqing Intermediate People's Court in Anhui Province. Another example is "the principle of good faith and the green principle" in the civil judgment (2022) Jing 02 Min Zhong 7970 of Beijing Second Intermediate People's Court. In addition, there is a "green principle of making the best use of resources" in the "green principle", as seen in the civil judgment (2022) Wan 08 Min Zhong 1116 of Anqing Intermediate People's Court in Anhui Province.

## 2. Analysis of the dilemma of green principle

From ancient times to the present, the harmonious coexistence between man and nature, as an eternal topic, is closely related to people's simple sense of law. There were laws on the protection of natural resources in the economic legislation of the Qin Dynasty, making the protection of natural resources a mandatory and sanctionary legal form<sup>[4]</sup>. In modern civil law, the green principle was applied on October 1, 2017. Based on the importance of "resources" and "environment" in the provisions, it is also known as the "resource and environmental protection principle", referred to as the "green principle" for short<sup>[5]</sup>. Before the green principle was incorporated into the Civil Code, that is, in terms of environmental protection and resource conservation issues, the law was absent from both the legislative and judicial perspectives. Therefore, the green principle should be included in the General Provisions of the Civil Code as an independent legal principle. This can ensure that the law pays sufficient attention to and regulates issues such as environmental protection and resource conservation, so as to ensure the sustainable development of human society. After years of judicial practice since its incorporation into the Civil Code in 2017, the green principle has contributed significantly to guiding legislation, interpreting civil laws and regulations, and filling legal loopholes in civil adjudication. However, judging from the 32 legal documents sampled in 2022, more efforts are still needed in the judicial application of the green principle.

### 2.1 The judicial application of "resources" and "environment" is not smooth

As principles of the Civil Code, the Green Principles encompass the two uncertain legal concepts of "resource conservation" and "environmental protection."<sup>[6]</sup> Therefore, it is particularly important to explain the relevant legal terms. In the judicial context, regarding 'resources', as stated in the civil judgment of Case No. 6091 of the Intermediate People's Court of Jinan City, Shandong Province (2022) Lu 01 Min Zhong 6091, it is expressed that 'restoring the original state may result in the waste of social resources. The civil judgment of the Intermediate People's Court of Liuzhou City, Guangxi Zhuang Autonomous Region (2022) Gui 02 Min Zhong 380, states that it is "not conducive to saving social resources." Some documents, regardless of scope, directly and broadly refer to "resources," such as the civil judgment of the Intermediate People's Court of Xinyang City, Henan Province (2022) Yu 15 Min Zhong 2475, and the civil judgment of the Intermediate People's Court of Hanzhong City, Shaanxi Province (2022) Shan 07 Min Zhong 1292. Second, concerning "environment": In judicial practice, as demonstrated in the legal document of the Intermediate People's Court of Hanzhong City, Shaanxi Province (2022) Shan 07 Min Zhong 1293, the environmental ethics of "anthropocentrism" establish a basic principle, namely the green principle. However, most legal documents mention "ecological environment" without further explanation, such as the civil judgment of the Intermediate People's Court of Siping City, Jilin Province (2022) Ji 03 Min Zhong 355.

On the theoretical level, the first, about "resources". There is a dispute between "natural resources" and "all resources" in academia. Yang Cuibai pointed out that the word "resource" belongs to the typical concept of uncertainty in law, and the definition of resources under the semantics of civil law is still blank. He advocated that resources should be covered by the concept of "resource" in environmental law<sup>[7]</sup>. For example, Yang Tiejun pointed out, by comparing the meanings of fishery Law, Wildlife Protection Law and Water Law, that the interpretation of Article 9 is limited to natural resources. It can be considered that the resources in Article 9 of the General Provisions of Civil Law are natural resources, rather than resources under other extended meanings<sup>[8]</sup>.

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Second, about the "ecological environment". Fan Yong believes that "environment" is a relatively mature legal concept. According to Article 2 of the Environmental Protection Law, "environment" is "a whole variety of natural and artificial natural factors that affect the survival and development of human beings". Although the terms "ecology" and "environment" both refer to the whole of nature, they have different priorities. Among them, "ecology" focuses on the dynamic correlation of ecosystems, taking the ecosystem as the center, and emphasizing the interaction and mutual restriction between various organisms, between organisms and the environment. The "environment" is centered on human beings, focusing on the situation and the static existence and quality of the natural and man-made material environment in which human beings live and move. According to Ouyang Aihui's semantic interpretation, Article 9 of the General Principles of Civil Law should define "environment" as the "legal environment within the civil law system."

## 2.2 The judicial application field of green principles is unclear

At the judicial level, as mentioned in the 32 legal documents, 14 disputes in the management of unjust enrichment; 1 property right dispute; 1 tort liability dispute. There are 3 labor disputes and personnel disputes (for the same case, there is 1). At the theoretical level, the code has 1,260 articles,

including general provisions, property rights, contracts, personality rights, marriage and family arrangements, inheritance, tort liability and supplementary provisions. The "Civil Code" stipulates how many "green" provisions. Many legal people have different understandings of the number and places to use the green principles. Xu Guodong pointed out that it is impossible for every provision of our draft civil code to be a green regulation<sup>[13]</sup>. Lu Zhongmei mentioned 18 articles concerning the protection of resources and the environment<sup>[14]</sup>. Although the inclusion of personality rights also has the shadow of the green principle, it mainly involves three articles of real rights, contract rights and tort liability. Cao Jun after combing that a total of 30 green provisions<sup>[15]</sup>. Yang Tiejun pointed out in the article that according to the provisions of the Civil Code, the real rights, contract and tort liability articles all have clear legal norms, implementing the purpose of Article 9, such as 286,326,346,509,1229,1230,1231,1232,1233,1234,1235 and other relevant articles 11. In other words, the green provisions of the civil code have different views on the number and field distribution of the green provisions of the civil code as a whole.

### **3. Suggestions for improving the judicial application of green principles**

#### **3.1 Strengthen the interpretation of green principles**

On May 28, 2020, the Civil Code was adopted, and the general Provisions have solemnly written down the green principle. On the one hand, strengthen the interpretation and interpretation of the green principle of civil law itself. The green principle is a broad concept that includes many aspects, such as environmental protection, resource utilization, ecological protection and so on. Therefore, in practice, it is necessary to explain the meaning and scope of green principles in detail, and clarify its specific meaning, so as to better guide social practice. For example, when explaining the green principle, it is necessary to re-examine its basic concepts and connotation, clarify the meaning of the green principle in theory, and unify the connotation of the key words "resources" and "environment", so as to understand and apply them accurately. For example, the essence of the green principle clause is to make rational and efficient use of natural resources, prevent, reduce and control pollution, and protect and improve the ecological environment. Therefore, "resources" here should refer to "all resources", and "saving" mainly refers to reducing the burden of the earth's ecosystem. "Saving resources" is based on the negative understanding, which not only means discarding, but also includes the major dormancy of resources, including high cost and low return development resources. It also means that resources are left idle for a long time and cannot be used, causing certain damage to the social ecology. The term "Environment" should refer to the term "natural environment". "Protecting the ecological environment" means that people consciously protect resources and make them rationally used and prevent them from being polluted and destroyed in order to achieve a state of harmonious balance between people and nature. On the other hand, strengthen the interpretation of the green provisions of the Civil Code. The application scope of the green principle is mainly in the real right, contract and tort liability chapters of the civil code. In the compilation of real right, the establishment and exercise of the right to use construction land and usufructuary right should follow the green principle. In the contract compilation, the effectiveness and performance of the contract should not only fulfill the agreed contractual obligations, but also fulfill some legal contractual obligations based on the green principle. In the compilation of tort liability, some provisions are made on the tort liability of environmental pollution and ecological damage, and ecological restoration is clearly confirmed as a way of bearing tort liability. But there is no doubt that, as the basic principle of the civil code, the green principle leads the full text of the civil code. Judicial organs should strengthen the interpretation and application of the green principle, especially in environmental protection cases, to give full

consideration to the connotation and requirements of the green principle, pay attention to the protection of the ecological environment and ecological balance, and strengthen the crackdown and sanctions on environmental polluters. In short, the legislature and the judiciary should jointly strengthen the interpretation and application of the green principle and its relevant provisions, and provide more solid legal and judicial support for the cause of environmental protection from many aspects.

### 3.2 Strengthen the judicature of green principles

When obeying the law seems to bring more benefit or less harm to mankind than not obeying it, people will be willing to obey it. People act out of their will, which is because of their hope and fear. Therefore, in the process of following the green principle, the key is to do a good job between the green principle and the civil law system in the basic obligations of civil subjects, civil legal acts, contract system, property system, ownership system, intellectual property law and debt law, so as to avoid the risk of the basic principles being ignored. To be specific, it is necessary to provide support for integrating environmental protection concept into the content of the civil law, establish a systematic interpretation framework of green provisions, and realize its due environmental protection function. Secondly, it is necessary to set up special civil norms in the environmental code to supplement and improve the environmental protection system established by the civil Code and ensure the smooth operation of the special civil rules for environmental protection. In environmental law with the civil code, implement the concrete measures, should be with sustainable development as the goal, with environmental code in the management specification of the green principles of the civil code provide according to specification, with special specification for the incentive specification in the civil code of detailed rules, by perfecting the ecological environment responsibility system to build collaborative ecological environment tort relief mechanism. Thirdly, in terms of green principle, we should improve the relevant case guidance system of green principle, and explore the practical methods and experience of various green principles. The implementation of case guidance is not only conducive to the implementation of the legality and rationality of the judge's trial, but also conducive to restricting the free judgment of the judge's trial, so that the judges can better fulfill their obligations and fulfill their rights. In addition, the judicial publicity and education related to the green principle should be strengthened to improve the judicial personnel's understanding and understanding of the green principle, and enhance the pertinence and effectiveness of the judicial practice. At the same time, it is also necessary to strengthen the judicial cooperation and exchanges related to the green principle, promote the cooperation and cooperation among all parties, and jointly promote the judicial process of the green principle. In addition, the public is encouraged to participate in the judicial practice of green principles. Furthermore, encouraging public participation in the judicial practice of the Green Principles is essential. This can be achieved through various channels, such as public education, involvement in environmental conservation actions, and establishing environmental hotlines. These efforts aim to strengthen public awareness and understanding of the Green Principles. Encouraging active public engagement in the judicial process of the Green Principles is crucial to collectively promote their realization and implementation. Finally, the green principle, as the judgment basis of environmental protection cases, needs to analyze the specific situation, and comprehensively take into account the requirements of the green principle and other relevant legal provisions. At the same time, in the process of applying the green principle, it is necessary to pay attention to weighing the interests of all parties and avoid the excessive expansion of the green principle, leading to the infringement of the legitimate rights and interests of other civil subjects.

## 4. Conclusion

With the increasing awareness of environmental protection, the judicialization of the Green Principle in the legal field has become an inevitable trend. In the future, by strengthening the interpretation and judicial application of the Green Principle, we can anticipate that it will continue to receive legal protection and support, injecting more strength into environmental protection and sustainable development.

## References

- [1] Zhu Xiao. *On the judicial application of the green principle* [J]. *Law of China*, 2021 (04): 83-102.
- [2] Zhu Huijun. *The Application of Reasoning on the Green Principle in Civil Judgment Documents---An Analysis Based on 92 Civil Judgment Samples*. *Journal of the Application of Law*, 2020(23): 39-46, 48.
- [3] Li Xueyao, Liu Zhuang. *Proof techniques: judicial reasoning and prejudice in judgment* [J]. *China Law Review*, 2022 (02): 91-106.
- [4] Li Lingling. *On the natural resources protection in the law of the Qin Dynasty* [J]. *Journal of Yellow River University of Science and Technology*, 2012,14 (06): 116-119.
- [5] Cai Shouqiu, Zhang Yi. *Interpretation and system interpretation of green principles* [J]. *Journal of Gansu University of Political Science and Law*, 2018 (05): 1-8.
- [6] Ma Mi, Huang Rong, Chang Guohui. *Judicial application of the green principle of the Civil Code: practice pattern and optimization path—Based on the judicial application of Article 9 of the General Provisions of the Civil Law* [J]. *Legal applicable*, 2020 (23): 49-57.
- [7] Yang Cuibai, Li Zongheng. *The understanding and application of green principles into civil judgments* [J]. *Journal of Henan University of Economics and Law*, 2020,35 (03): 52-58.
- [8] Yang Tiejun, Tian Dongcheng. *Research on the application of green principles in civil trials* [J]. *Journal of Daqing Normal University*, 2021,41 (03): 18-25.
- [9] Fan Yong. *The green boundary of private autonomy—The understanding and implementation of Article 9 of the General Provisions of the Civil Law* [J]. *Journal of East China University of Political Science and Law*, 2019,22 (02): 116-123.
- [10] He Jian. *Green Principles and Law Economics* [J]. *Law of China*, 2019 (02): 110-127.
- [11] Ouyang Aihui, Wu Shengyuan. *Analysis of the General Provisions of the Civil Law from the perspective of legal hermeneutics—takes article 9 of "Saving resources and protecting the ecological environment" as the center* [J]. *Journal of Jiaozuo University*, 2019,33 (04): 3-6 + 11.
- [12] Zhao Wanyi. *Basic principles of civil Law: How to express them accurately in the general Provisions of civil law?* [J]. *Journal of China University of Political Science and Law*, 2016 (06): 30-50 + 160-161.
- [13] Xu Guodong. *Carefully dialysis the "green" in the draft Green Civil Code* [J]. *Legal Research*, 2003 (06): 7-10.
- [14] Lv Zhongmei. *An Insight into the Environmental Law of the 'Green Rule' in the Civil Code* [J]. *Journal of Law*, 2020, 41(10): 1-11.
- [15] Cao Jun. *About the ten why and what are of the Green Civil Code* [J]. *Ecological Civilization in China*, 2020 (03): 42-43.