

# Research on the Function of "Double Carbon" Goal of Judicial Service under the Background of the New Round of Judicial Reform

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## Abstract

Judicial service is the last line of defense to maintain social fairness and justice. It has the basic functions of right relief, determination of division and elimination of disputes, and power restriction. It provides a powerful judicial guarantee for the realization of carbon peak and carbon neutrality, which is related to the sustainable development of the Chinese nation. Exploring the function of the "double carbon" goal of judicial service under the background of the new round of reform not only provides judicial assistance for political, economic and social development, but also conforms to the development of The Times, which has positive implications. Under the background of the new round of judicial reform, this paper interprets the specific definition of the judicial service "double carbon" target function, analyzes the various factors that affect the judicial function, and proposes the optimization path to promote the maximization of judicial function, so as to better serve the "double carbon" goal and promote the realization of the "double carbon" goal.

## Keywords

Judicial Reform; Judicial Function; Influencing Factors; Function Maximization.

## 1. Question Raising

At the 75th session of the United Nations General Assembly on September 22, 2020, it was made clear that China's vision goal is to reach a peak in carbon emissions by 2030 and strive to achieve carbon neutrality by 2060. At present, China faces many challenges to achieve the goal of carbon peaking and carbon neutrality (hereinafter referred to as the "double carbon" goal), such as a late start time, heavy tasks, unbalanced development, lack of technological reserves, trapped interest adjustment, and high costs. Therefore, it is particularly necessary to provide institutional protection. Legislation, law enforcement, judicature and law-abiding are the four basic links of the rule of law. Among them, judicature is the last line of defense to maintain social fairness and justice, and plays an important role in relieving and compensating people's rights. The realization of the goal of carbon peaking and carbon neutrality is inseparable from the play of judicial functions. The judicial system plays an increasingly prominent role in the national governance system in the field of ecological and environmental protection. In the context of the new round of judicial reform, the functional exploration of the "double carbon" goal of judicial service is actually to seek the functional connection between the judiciary and the realization of the "double carbon" goal from the perspective of judicial reform. The question is, under the background of the new round of judicial reform, what functions does the judiciary have for the realization of the "double carbon" goal? How to interpret the meaning of this function? What factors influence the function? How to maximize the utility of this function? This is the question of this article. Using "carbon peaking and carbon neutralization" as the search term, it was found that the relevant research mainly focused on environmental resources and scientific utilization, industrial economy, economic system reform, finance and other

disciplines, while the discipline of law was relatively few. In addition, the existing research in the field of law mainly focuses on the institutional guarantee at the legislative level. Therefore, this paper adopts the research methods of literature analysis and case analysis to deconstruct the proper interpretation of the "double carbon" objective function of judicial service under the background of a new round of judicial reform, so as to give full play to the maximum utility of judicial function and help achieve the goal of carbon peak and carbon neutrality.

## **2. The Functional Interpretation of the "Double Carbon" Goal of Judicial Service under the Background of the New Round of Judicial Reform**

There are various views on judicial function. Some scholars define judicial function as a function beyond the judiciary itself, including political function, democratic function and legal function; Some scholars believe that judicature has both preventive and relief functions; Some scholars classify the judicial function as the basic function of justice, namely legal function and the extension function of justice, namely social function. Some scholars interpret it from the perspective of traditional judicial function. Based on this, this article starts from the three inherent functions of the judiciary, combined with the background of judicial reform, in order to realize the vision and goal of "double carbon", and interprets the specific functional meaning of the "double carbon" goal of judicial service.

### **2.1. The Function of Right Relief**

The judiciary is the last line of defense in safeguarding social fairness and justice, and has the function of relief and compensation. With carbon peaking, carbon neutralization is an integral and systematic project, which needs close attention. Different from the traditional passive judicature, environmental protection litigation is more active and manifests as active judicature. On the one hand, judicature promotes individual relief, including private relief and public relief. In the white paper "Environmental and Resources Trials in China (2019)" issued by the Supreme People's Court in May 2020, the Supreme People's Court defined climate change cases, covering various fields such as civil, administrative, criminal and public interest litigation. When rights are infringed, the diversified types of litigation broaden the avenues for relief. As environmental justice becomes more specialized, climate change litigation, as an important part of environmental justice, retains the character and attributes of environmental justice. In recent years, the procuratorial environmental public interest litigation has undergone a process of preliminary exploration, pilot implementation and formal establishment. The judicial reform requires the vigorous development of public interest litigation, so that the environmental public interest relief function can be brought into play. In terms of rights relief, more and more attention has been paid to environmental public interest litigation, moderately mobilizing the judicial utility, and promoting the resolution of individual disputes. On the other hand, the judiciary can effectively promote the overall coordination of the rule of law. Rule of law is an organic combination of static legal basis system and dynamic judicial application process. [24] There is a lag in climate change legislation, which often leads to the phenomenon of "facts without norms". Moderate judicial activism can interpret laws and remedy omissions, and flexibly deal with various complex interest disputes. Judicial activities on climate change have forced the improvement of law enforcement and citizens' awareness of actively using legal means to protect their rights and interests. Therefore, the overall coordination of legislation, law enforcement, judiciary and law abiding is promoted, so as to provide sufficient and solid guarantee for the remedy of rights.

### **2.2. The Function of Determining Division and Stopping Disputes**

Judicial activities are independent and neutral, and their fundamental purpose is to resolve disputes and conflicts through the use of judicial power to judge the rights and wrongs. Case

judicature has five states: trial, judgment, settlement, influence and expectation. Once it reaches the state after settlement, it can play the function of determining and ending disputes directly affecting the parties.[17] The clarity of the vision and goal of "double carbon" points out the direction for practice. Litigation practices on climate change and air pollution are on the rise. Climate change litigation mainly includes climate change administrative public interest litigation with the government as the defendant and climate change civil public interest litigation with enterprises as the defendant. On November 20, 2013, the environmental organization Urgenda Foundation and 886 Dutch citizens filed a lawsuit with the Hague District Court in the Netherlands, arguing that the Dutch government was legally responsible for failing to mitigate climate change. This case is a civil tort public interest lawsuit based on climate change. On June 24, 2015, the Hague District Court issued a ruling ordering the Dutch government to curb greenhouse gas emissions by at least 25 percent from 1990 levels by 2020. On October 9, 2018, the Court of Appeal in The Hague, Netherlands, upheld the ruling. Again in domestic litigation practice of air pollution, for example, Beijing fengtai source enthusiasts institute for environment and shenzhen mayor park hair technology co., LTD. Environmental pollution civil public interest litigation, the court after hearing, identified the source enthusiasts, conform to the requirements of the environmental public interest litigation environment institute has filed a lawsuit main body qualifications, of relevant facts, amount to be determined, And supported the plaintiff's relevant lawsuit request. Both extra-territorial and domestic litigation practices show that judicial organs make a neutral judgment as an impartial neutral, which has the value of realizing fairness and is conducive to fundamentally resolving disputes and settling disputes. Therefore, after the judicial authority's judgment takes effect, it has res judicata, binding power, determination power and enforcement power. Both the original defendant and the defendant are bound by this judgment. Therefore, the function of climate change justice to determine and stop disputes can be brought into play.

### 2.3. Power Restriction Function

The judiciary exercises oversight over power. Through judicial review of the legitimacy of public power act, the legal control of public power into the judicial field, its main target is the administrative organ, the object of action is the administrative act of the administrative organ. Most of the subjects of climate change and environmental pollution control are administrative subjects. Climate change justice forces administrative organs to actively perform the function of climate control according to law, and alleviates the deficiency and slack of administrative accountability for various illegal acts. From the perspective of foreign climate change litigation practices, there are not a few litigation practices in which administrative subjects are the defendants. Throughout our climate change litigation practice, we can find that China has a relatively complete system of general administrative litigation and public interest litigation, which provides sufficient guarantee for judicial supervision of public power and promoting the realization of "double carbon" goals. The administrative litigation is the key link to realize the judicial power of administrative power restriction, key programs, comprehensive reform, the court in the judicial reform and the reform of the procuratorial background, with the center of the court jurisdiction will be more independent, on the basis of independent jurisdiction of the people's court effective checks and balances, executive power specification administrative inaction and disorderly as chaos [23].

### **3. The Influencing Factors of the Realization of the "Double Carbon Target" Function of Judicial Service under the Background of the New Round of Judicial Reform**

#### **3.1. Politics and Policy**

First of all, the realization of judicial function is premised on firm political strength. The report to the 19th CPC National Congress pointed out that "the leadership of the Party must be implemented in the whole process and in all aspects of the rule of law". [21] The Party has initially established a judicial system based on historical conditions, and the Party's leadership does not affect the independence of the judicial power centered on the judicial power. For a long time, the judicial system has been closely related to the people, and the purpose of judicial activities is to realize the values of the people. Against the background of the new era, the Party's latest instructions on judicial work require us to establish a people-centered "judicial defense line". Therefore, unwaveringly adhering to the Party's leadership is the fundamental guarantee to ensure that judicial work reflects the people's character. Such as the Fifth Plenary session of the 19th CPC Central Committee "the Central Committee of the Communist Party of China on the formulation of the National Economic and Social Development of the 14th Five-Year Plan and 2035 vision goals", The State Council issued "The State Council on accelerating the establishment of a sound green low-carbon circular development economic system guidance", the fourth session of the 13th National People's Congress The law of the People's Republic of China on the national economic and social development of 14 five-year plan and 2035 vision outline, "the central committee of the communist party of China, the State Council about the complete and accurate to fully implement the new concept of development to do a good job of carbon of peak carbon neutral opinion" issued, the ecological environment to release the carbon emissions trading management approach (trial) ", the National Development and Reform Commission and other departments on strictly energy efficiency Several Opinions on Constraining and Promoting Energy Conservation and Carbon Reduction in Key Areas were released, and the Ministry of Ecology and Environment issued the Notice on Carrying out Pilot Carbon Emission Assessment in the Planning and Environmental Assessment of Industrial Parks. These efforts not only included systematic planning and deployment at the national level, but also active promotion and implementation of relevant policies at the ministerial level. In addition, the background of the new round of judicial reform requires the active promotion of the right of action protection system, judicial responsibility system, procuratorial public interest litigation system and the reform of the litigation system centered on trial. To sum up, the continuous firmness of political forces and the continuous promotion and implementation of policies and reforms provide a firm cornerstone and powerful guarantee for the realization of the "double carbon" goal of judicial service.

#### **3.2. Applicable Legal Basis**

Rule of law is an organic combination of static legal basis system and dynamic judicial application process. [24] Judicature can make up for the lack of climate change legislation, but judicial activism should not be excessive. Legislation provides a system of legal rules for the administration of justice, and the administration of justice needs good legal basis. Therefore, the judiciary still needs to apply and identify practical situations according to legal norms in order to promote its function. At the present stage, the legal basis for judicial application of climate change is as follows: Firstly, there is a lack of norms at the central level. The Opinions on Complete, Accurate and Comprehensive Implementation of New Development Concepts and Carbon Peaking and Carbon Neutrality (hereinafter referred to as the Opinions) issued by the Central Committee of the Communist Party of China (CPC) and The State Council (hereinafter referred to as the Opinions) are intra-party regulations, and their application has not been

recognized; The enacted laws on climate change, including the Circular Economy Promotion Law, the Clean Production Promotion Law, the Energy Conservation Law, the Renewable Energy Law, the Forest Law, the Grassland Law, and the revision of the Air Pollution Prevention and Control Law, are mostly general and low operability. Secondly, in terms of special judicial norms, the Supreme People's Court issued the Opinions on Strengthening and Innovating Environmental and Resource Adjudication in the New Era to Provide judicial Services and Guarantees for the Modernization of harmonious coexistence between Man and Nature, which provides a judicial response to the realization of carbon peak and carbon neutrality. In the new stage, in order to achieve the vision and goal of "double carbon", China has given great support to the policy, but there is a lack of special national legislation for climate change, a lack of basic rules for the synergistic effect of pollution reduction and carbon reduction, and a lack of coordination between relevant legislative purposes. The "inability to follow" has led the judiciary into a "quagmire" with limited relief. This will become an important obstacle to the development of the dual carbon function of judicial services.

### 3.3. Judicial Synergy

Judicial synergy has become an important factor for whether the judiciary can effectively serve the realization of the "double carbon" goal. Carbon peaking and carbon neutralization is an integral and systematic project. Local environmental justice plays an important role in responding to the central green issues. [20] Because of the lack of a unified system of collaborative local judicial that there was a difference between the place and that there was a conflict of interest between the localization of judicial long contradiction, space characteristics unique to climate change, easy to cause the justice and the integrity of the "double carbon" target does not adapt, and under the influence of traditional thinking, parts will still justice as a relatively independent system, The coordination between judicial and administrative means under the rule of law has been ignored, the judicial coordination strength is insufficient, and the judicial coordination and governance ability needs to be improved. Therefore, there is a great judicial dilemma, which is not conducive to the progress of the overall system.

### 3.4. Prevention Concept and Civic Belief

The first is the value of prevention. In contrast to the field of environmental justice, the scientific community places great importance on strengthening the understanding of risk and is widely concerned with the systematic nature of risk. Climate change risks are difficult to predict, and traditional ex post restorative justice concepts and initiatives need to be changed to incorporate the value of prevention. At present, some legislation has clearly followed the requirements of the precautionary principle, such as the Land Pollution Prevention and Control Law published in 2018. However, throughout judicial practice, it is difficult to see preventive litigation cases, which weakens the institutional utility of the precautionary principle. The realization of the dual carbon goal requires the judiciary to play its preventive function. Compared with the large amount of human, material and financial resources spent on post-hoc relief and compensation measures, strengthening the preventive function is superior, which can reduce the cost in the process of realizing the "double carbon" goal, so as to improve the overall benefit.

Secondly, citizens' belief in the rule of law. Faith in the rule of law depends not only on good law, but also on a sound judicial system. The public's recognition of the "judicial defense line" is the expectation of the judiciary as a value to protect social justice, and is the judicial condition of the judicial defense line. [21] With the continuous promotion of the new round of judicial reform, China's judicial system has made great achievements in the aspects of efficiency, procedure and independent maintenance of social fairness and justice, which has built a solid public foundation for the judicial defense line, which coincides with the goal pursuit of the judicial line to reflect the people's value. Only when the people believe in it can the judiciary function be properly performed.

## **4. The Path Selection of the Maximization of the "Double Carbon" Goal Function of Judicial Service under the Background of the New Round of Judicial Reform**

### **4.1. Improving the Applicable Legal Basis**

We will formulate and improve relevant laws and regulations to provide sufficient and reliable legal basis for the realization of the "double carbon" goal. Efforts should be made at three levels: special laws on carbon peaking and carbon neutrality, horizontal legal coordination and vertical legal promotion. First of all, in terms of special legislation, a Carbon peaking Carbon Neutrality Promotion Law can be enacted in the short term, and a Climate Change Response Law can be gradually enacted in the long term. Secondly, horizontal level legislation, not only to formulate special laws, but also to modify the carbon peak carbon neutrality related laws, such as "energy saving law" "power law" "circular economy promotion law" "renewable energy law" "clean production promotion law" "coal law" and so on; Finally, the vertical level of legislation requires the National People's Congress to formulate special legislation or relevant laws; At The State Council level, relevant administrative regulations and departmental rules are formulated. Local people's congresses and local people's governments formulate local regulations and local government regulations, and systematically promote the realization of "double carbon" goals on the whole through this form. In addition, in the process of formulating or modifying relevant laws, part of the rules should be followed, relevant laws and regulations formulated or modified should reflect operability and enforceability, local legislation should be carried out under the overall planning of the central legislation, the lower law should not contradict the upper law, and the relevant applicable rules should be refined in the field of existing provisions. In order to fully release the judicial function, the content of legal norms should also reflect the rules of judicial application, such as strengthening the litigability of climate change in the law, establishing the corresponding judicial application mechanism, and actively carrying out local exploration and practice.

### **4.2. Enhancing Judicial Synergy**

First of all, we should adhere to the principle of pollution reduction and carbon reduction coordination, which refers to the joint management and control of air pollutants and carbon dioxide emission reduction to achieve synergistic effects. We must promote the integration of carbon peaking and carbon neutrality with the strengthening of ecological and environmental protection.[22] Secondly, collaborative governance has become an important part of national governance, and regional collaboration is the main focus of collaborative governance. [22] Based on the theory of coordination, regional judicial coordination should be strengthened. Firstly, the multi-subject of regional judicial coordination should be constructed, which not only includes the coordination within the judicial system, that is, when there is a carbon-related case between the local people's courts at all levels, the coordination in filing, prosecution, trial and execution should be strengthened. It also includes the coordination between judicial organs and other organs, such as judicial organs, legislative organs and administrative organs; Second, we have explored innovative mechanisms for promoting regional judicial coordination. In localization, the town under the background of judicial reform, promote local sharing mechanism between the breakthrough of the judicial administrative barriers, formulate unified judicial coordination rules, set up the judicial cooperative organization mechanism, perfecting the trial mechanism of judicial trial across the administrative division of the judicial cooperation of the pattern, strengthen the judicial collaborative, form a resultant force.

### 4.3. Implementing the Precautionary Principle

It is rare for judicial litigation practice to reflect the principle of risk prevention. Public interest litigation includes civil and administrative public interest environmental litigation. Different from civil public interest environmental litigation, administrative public interest environmental litigation is only after relief type litigation, and civil public interest environmental litigation prevention type litigation is also less, such as the green peacock case, Acer five leaflet case. In August 2021, the first part of the IPCC Sixth assessment report - "Climate Change 2021: The basis of natural science" pointed out that the increase of greenhouse gas concentration caused by human activities is the main cause of global warming. The report projected that climate change would intensify in all regions in the coming decades, and the environmental risks associated with this were clear. Climate change has the uncertainty is difficult to predict the risk of carbon neutral in promoting carbon peak work, should adhere to the implementation of the precautionary principle, the change of the past "end-treatment", "control" the traditional means of governance, determined to prevent the value orientation, turn to new solution for risk prevention. As a result, law should be made, from the system level to carry out the preventive judicial, breakthrough traditional judicial tolerance and judicial restraint, relief the shackles of the judicial, preventive environmental public interest litigation can not only apply to the civil, should also apply to the administrative public interest environmental litigation, the preset of environmental administrative public interest litigation filed a preventive action space, Explore the preventive procuratorial environmental administrative public interest litigation, construct the climate change preventive litigation system, standardize the content of preventive litigation, and form a dual relief system of organic connection between environmental civil public interest and environmental administrative public interest preventive litigation. But at the same time, we should adhere to the principle of modesty, moderate initiative, and promote the overall system of the "double carbon" goal.

## 5. Conclusion

Carbon peaking and carbon neutralization is an integral and systematic project. The realization of the "double carbon" vision needs to return to the rule of law, and the judiciary should give full play to its function. Inherent rights under the background of a new round of reform, the judicial relief, fixed points check restricts the function of public rights in service, the concept of "double carbon" target have different definitions, politics and policy, applicable law, the judicial concept of collaborative and prevention and the citizen's belief is the service "double carbon" target function to realize the important influence factors, Therefore, efforts should be made in the application of legal basis, judicial synergy and prevention principle to solve the corresponding crux, so as to continuously inject judicial power into the realization of the "double carbon" goal.

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