

On the Constitutional Protection of Carbon Emission Right as the Right of Development

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Abstract: Since the development of the second human rights, the right to development, as the third human rights advocated by developing countries, has become popular. Under the two-carbon target, some scholars say that the carbon emission right is the right to development, and it is a basic human right for developing countries. To be sure, with the total amount of carbon emissions fixed, both the speed and level of development are closely related to the amount of carbon emissions allocated. But now double carbon joint agreement distribution unclear terms, developed countries and developing countries demand for carbon emissions and carbon neutral ability difference is bigger, the corresponding management of carbon emissions is more policies and regulations, the lack of host rules of supply, constitutional guarantee, has affected the double carbon under the goal of national development and construction. Therefore, as the right to development of carbon emissions protection should be in the constitution respect and safeguard human rights and the principle and the principle of rule of law as the guidance, establish a sound legal system of carbon emissions, reasonable balance production development and double carbon target relationship, concrete refinement to implement the limit of carbon emissions related laws and regulations, realize the constitutionality of the legal order.

Keywords: Carbon emission right; Constitutional protection; Right to development; Two-carbon target

Introduction

In today's increasingly severe global warming, carbon emission right, as an important tool to deal with climate change and achieve green and low-carbon development, its legal status and the construction of its guarantee mechanism have become the focus of general attention of the international community. This paper takes the two-carbon target as the main line, takes the carbon emission right, namely the third human right, as the connotation, constructs the legal order of the constitutionality of the carbon emission right, and improves the specific path of the constitutional protection of the carbon emission right.

1. Necessity: the constitutional guarantee of carbon emission right is urgent

1.1 Carbon emission rights —— dual-carbon targets as the anchor of the sea

In an important speech at the UN General Assembly, the General Secretary pointed out that all countries should take decisive steps in the direction of global green and low-carbon transformation. China will increase its nationally determined contribution, strive to peak its carbon dioxide emissions by 2030, and strive to achieve carbon neutrality by 2060.^[1] In response to General Secretary Xi's transition to the global green and low-carbon, governments at all levels have issued a series of supporting policies to support carbon emissions, with the use of market means to mitigate climate change, and bring expected development opportunities for financial institutions to carry out related businesses.

1.2 Standardize the carbon emission rights to create a harmonious market

The domestic carbon emission trading market is still in the preliminary exploration stage, and there are problems such as the weak vitality of the pilot trading market, the low and unstable carbon emission trading price, unreasonable resource allocation, low trading efficiency and lack of guarantee. In the final analysis, the constitutional guarantee of carbon emission right is insufficient, the definition of carbon emission right of governments at all levels is different, and the lack of guidance and support from the superior law. Only by properly handling the rights and obligations between the government and enterprises, sorting out the private subject relationship between enterprises in the market, and clarifying the judicial nature, can we standardize the carbon emission rights and create a harmonious and stable market. The premise of a good market environment is a perfect supporting legal order, mainly based on the constitutional guarantee, the lower law at all levels specifically implement the guarantee path, mainly based on the protection of the transaction order, divide the responsibility and power of the government, handle the contradiction of public law interference in private law, and timely settle the judicial disputes. To create a harmonious market

is to create a cradle bed for energy conservation and emission reduction to achieve the dual carbon goals. Even if the carbon emission right is regulated and guaranteed by the Constitution, the carbon emission right as the right to development will be implemented.

1.3 Maintain the human rights behind the carbon emission rights —— the right to development

Everyone is born equal, the resources on the earth should be shared by human beings, and everyone has the equal right to consume and use natural energy to enjoy the environmental responsibility. This is also the most basic human rights, and it is also necessary to give people equal carbon emission rights. Carbon emissions and carbon neutral, in the population of total carbon emissions to control, enterprises with a small amount of natural energy to create low carbon goods, with the hand of the market to phase out high carbon commodities, carbon emissions is natural person survival and enterprises must maintain production and business operation activities, natural persons and the key emissions units enjoy fact state of carbon emissions. Now by the country to lead the regulations, the global carbon emissions and administrative means to allocate carbon emissions to society, eventually feedback to the national strength, the life rich to feedback to everyone, to realize the human rights behind the carbon emissions —— everyone reasonable enjoy natural resources in the pursuit of a better life.

2. The practical dilemma of carbon emission rights

2.1 The definition of carbon emission rights is difficult to be different

For the definition of carbon emission rights, various scholars have their own words, and all have reasonable citation arguments. In practice, the legislation related to carbon emission rights covering the central and local administrative legislation causes different difficulties in government implementation, increased market trading risks, and unclear judicial decisions. As now invalid "interim measures for carbon emissions trading management" released in 2014, the carbon emissions are defined as like atmospheric greenhouse gas rights, the definition of carbon emissions and distribution of carbon emissions, Hubei and Tianjin in Hubei province, Hubei province carbon emissions management and trading interim measures for trading carbon emissions in Tianjin are used the national development and reform commission and carbon emissions quotas, and in 2021 the carbon emissions trading management method (trial) carbon emissions attributes defined as rights and interests, and the carbon emissions quota defined as the content of the carbon emissions.^[2] Among them, Chongqing and Shenyang have the same definition of carbon emission right, some of which directly avoid the attribute of carbon emission right. Therefore, it can be found that both departmental regulations and local government regulations have different definitions of carbon emission rights, among which the legal attributes of carbon emission rights are avoided, and some factual attributes are used to define.

2.2 Market trading sentiment is low

At present, our country's carbon emissions trading market scale gradually increase, upgrade from seven pilot to eight pilot, the cumulative turnover has more than one, seemingly has gradually forming, but is still in the preliminary exploration stage, due to the main body of the market is limited, at present, carbon trading market is not open to the society, only key emissions units and a few conform to the relevant provisions of the state institutions and individuals can participate in trading. The government regulation is strong, the market coverage is narrow and the activity is not high. In terms of the current national carbon emission trading market, there is still a big gap with the European Union or South Korea in the market price, market heat and market role. China's carbon emission subjects are mainly limited to the power industry enterprises, the carbon emission trading market is independent of each other, but also have their own carbon emission rights trading platform, loose contact between each other^[3], without the formation of a strong national trading system. And carbon emissions products type single, no related derivative market, although the carbon emission quota is carbon trading market products, but carbon emissions trading and carbon dioxide equivalent price for the valuation unit,^[4] can be seen that carbon dioxide is the focus of the greenhouse gas control, at the same time as the only external form also limits the development of carbon emissions trading.

2.3 Judicial practice lacks the backbone

No relief, no right, in the process of trading market for carbon emissions are gradually grow, for the protection of carbon emissions is more important, especially on the premise of the absence of advanced legislation, judicial relief need to accurately grasp the economic attributes of carbon emissions, public attributes, and ecological attributes, and in accordance with the law in the process of trading and guarantee disputes. Although the Supreme People's Court issued on October 28, 2021 on strengthening the trial of innovative environment and resources for the modernization of a harmonious coexistence between man and nature,^[5] the Opinions did not clearly define the nature of carbon emission rights. For example, "in 2011, Beijing Chaoyang Court accepted Shanghai Taibiya Environmental Protection Co., Ltd. against Beijing NoHuawei Certification Co., Ltd. over the 'carbon emission reduction' certification dispute, which is known as" the 'first case of China's carbon emission reduction industry'". The case finally dismissed the lawsuit on the grounds that the subject of the lawsuit was wrong, which not only reflects the lack of regulation of China's carbon trading market, but also reflects the blank and helplessness of carbon-related cases in the current judicial field.

3. As the right to development, the right — respect and protect the principle of human rights

3.1 The protection of carbon emission rights should focus on the respect and protection of human rights

The Constitution stipulates that the principle that the country respects and protects human rights. It requires state organs at all levels to establish the concept of respecting and protecting human rights, strengthen the legal protection of human rights, and ensure that the people enjoy extensive rights and freedoms in accordance with the law. There are many contents of human rights, such as equal rights, property rights and social rights. Respect for and protection of human rights is a basic requirement of legislative activities, which stipulates the basic rights of citizens.^[6] Now, the right to development as three generations of human rights gradually widely recognized by the world, the concept of human rights is put forward against the existing alien things should enjoy the rights, carbon emissions means industrial progress and economic development, and the people pursue happiness enjoy low carbon environment, moreover as the living, are equal access to the earth's natural resources, natural environment to survive life development their own rights, equal emissions of carbon dioxide is use part of the earth environment resources.

4. The specific path of the constitutional protection of carbon emission rights

4.1 Give the guidance and support of the higher-order method

The Constitution is the embodiment of the principle of respecting and protecting human rights. In order to better guarantee the carbon emission right as the right to development, we must achieve the institutional construction of carbon emission right protection, so as to better guarantee the carbon emission right as the right to development. Build carbon emissions security system, the first need from the perspective of the constitution, because the characteristics of carbon emissions has multiple properties, for the perspective of civil law, carbon emissions to refine its economic characteristics, as the introduction of usufructuary rights, in its carbon emissions for carbon emissions disposal benefits on the basis of fact, affirmation and confirmation. This legislation can stimulate the activity and power of the market more. In terms of administrative law, the government authorities as a longitudinal distribution system, its behavior compliance content is more standardization rationalization, in the case of different development state, reasonable allocation of resources, strengthen the license granted carbon emissions enterprise qualification, establish a set of effective regulation of market, for carbon emissions trading market system clear trading rules. In this way, a normative system of carbon emission rights from the constitution to separate laws and then to the complementary policy rules

4.2 Standardize the behavior of government authorization and market regulation

As for the determination of carbon emission right and the initial allocation of carbon emission quota to the market, there is indispensable the intervention of administrative power. Administrative law is regarded as the medium between public interests and private interests. At this time, the government controls the general direction of the carbon emission trading market with its own advantages and reconvarious interests.

Specifically, the modern administrative distribution mode to the boundaries of public law and private law is no longer obvious, become more of the bridge between the two, on the one hand, the administrative organ to complete state plan to make specific implementation path, on the other hand, the administrative organs at all levels for a certain range of rules adjustment and the corresponding implementation of the control. As a "middleman", the administrative organs need to distribute it on the basis of weighing the advantages and disadvantages to ensure that the interests enjoyed by all parties can coexist harmoniously. Around the resources and economic situation is different, the region of carbon emissions trading regulations or management method is not the same, but it is important to note that, in dealing with certain different differences also need to respect and protection of human rights in the constitution, give the region real development space, rather than at the expense of certain small business future and the other local resources to achieve seemingly good carbon emissions trading market. Or in terms of resource allocation, high-pollution enterprises and industries with new emission reduction technologies should be treated fairly and reasonably, rather than high-pollution with more carbon emission quotas, which reduces the cost of carbon control for enterprises and is not conducive to the transformation of enterprises to the new green technologies.

4.3 Maintain a sustainable carbon emission trading market

Since the establishment of the national carbon emission trading market, it has accumulated a lot of rich experience. To achieve a sustainable carbon emission trading market, we should grasp the core content of market trading, the first is total control, and the second is to promote the enthusiasm of enterprises through profit. At present, China's carbon emission rights trading market is lack of vitality, the price of carbon emission rights is low, and the allocation of resources is chaotic and not efficient. Change the status quo must first establish from the administrative control mechanism to marketization mechanism, compared with the public power management path, as the carbon emissions circulation in the market, the market mature, to absorb more carbon emissions trading main body involved in the carbon trading market, more promote market mechanism, thus to the public to give a clear information, is the ecological environment of environmental consciousness is

to the attention. The subjects of the carbon trading market are increasingly concerned about environmental issues, and they are also seeking to improve a good environment through their own technological improvement. Through flexible price intervention mechanism, improve the performance safeguard measures, effective third party management and strict regulation, can improve the stability of the market, fairness and transparency, further promote the healthy development of carbon trading market, the top-down distribution of carbon emissions to the bottom-up constantly promote the double carbon target.

5. Conclusion

As an important part of the current energy transformation to achieve the two-carbon goal, it is necessary and urgent to build the constitutional guarantee to guide the concrete practice and development. This is not only a respect for and protection of the legitimate rights and interests of Chinese enterprises, but also an important manifestation of China's fulfillment of international obligations and promoting green and low-carbon transformation. In the future, we look forward to making a continuous improvement of the relevant laws, regulations, policies and measures to provide a more solid legal foundation and institutional guarantee for the legal exercise and effective guarantee of carbon emission rights.

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