

OPPORTUNITIES AND CHALLENGES OF CLIMATE CHANGE ADMINISTRATIVE PUBLIC INTEREST LITIGATION UNDER CHINA'S 'DUAL CARBON' GOALS

Li Huaqi

TABLE OF CONTENTS

I. INTRODUCTION	85
II. THE ROLE OF JUSTICE IN GLOBAL CLIMATE GOVERNANCE	87
<i>A. The Process of Global Climate Change Litigation</i>	87
<i>B. The Concept and Characteristics of Administrative Public Interest Litigation Under Global Climate Governance</i>	89
<i>C. Advantages of Administrative Public Interest Litigation in Addressing Climate Change</i>	91
III. PATH SELECTION OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION IN CHINA	92
<i>A. Arrangement of China's 'Dual Carbon' Legal System</i>	92
<i>B. Allocation and Coordination of 'Dual Carbon' Governance Tools</i>	94
<i>C. Administrative Public Interest Litigation Based on Scientific Protection Obligation</i>	95
IV. LEGAL POTENTIAL OF CHINA'S RESPONSE TO 'DUAL CARBON' GOALS THROUGH ADMINISTRATIVE PUBLIC INTEREST LITIGATION	97
<i>A. Legal Framework on Administrative Public Interest Litigation</i>	97
<i>B. Practical Achievements of Administrative Public Interest Litigation in China</i>	99
<i>C. Addressing Legal Challenges in Administrative Public Interest Litigation on Climate</i>	101
V. INSTITUTIONAL CONSTRUCTION OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION IN CHINA	103
<i>A. Positioning of Administrative Public Interest Litigation in China's Climate Governance</i>	103
<i>B. Conditions for Administrative Public Interest Litigation</i>	105
<i>C. Procedure Design of Administrative Public Interest Litigation</i>	107
VI. CONCLUSION	108

OPPORTUNITIES AND CHALLENGES OF CLIMATE CHANGE ADMINISTRATIVE PUBLIC INTEREST LITIGATION UNDER CHINA'S 'DUAL CARBON' GOALS

Li Huaqi*

Confronting the global challenge of climate change, jurisdictions worldwide have seen the emergence of climate litigation pursuing mitigation and adaptation objectives. Administrative public interest litigation grounded in states' obligations to combat climate change has emerged as the predominant legal pathway for climate-related judicial interventions. Since the 'dual carbon' goals (carbon peak by 2030 and carbon neutrality by 2060) were proposed, China has introduced a number of legislative and policy measures to promote the coordinated operation of multiple governance tools in order to achieve the national climate governance goals. As an important component of the national governance system, the regulatory function of the judicial mechanism is becoming increasingly prominent. China has established a procuratorial administrative public interest litigation system, supported by its comprehensive legal framework and evolving judicial practice, which provides a viable institutional foundation for climate governance applications. To further leverage the role of this system in climate governance, it is necessary to clarify the relationship between administrative power and judicial power, take process supervision as the focus of system implementation, and supplement civil public interest litigation against carbon emitters. Specifically, the litigation system should be expanded from aspects such as the objects of litigation, causal relationships, and specialized review standards for climate cases. With the continuous improvement of pre-litigation procedures and judgment forms, it will better support the 'dual carbon' goals.

I. INTRODUCTION

In order to achieve the goals of 'carbon peak' and 'carbon neutrality', China has introduced a series of relevant policies, which have initially built a 'policy cluster' involving 'dual carbon' issues from the central to the local levels and from special regulation to comprehensive adjustment.

* Associate Professor at the Law School of Hohai University. This article is a phased achievement of the National Social Science Fund Youth Project, entitled *Research on the Legal Application of Green Provisions in the Implementation of the Civil Code* (Grant Number: 21CFX046).

These policy documents are highly goal-oriented and play a role in regulating carbon emissions to a certain extent. However, they may not yet be sufficient to resolve controversial cases such as climate change. With the advancement of climate change policies, judicial authorities in various countries are committed to playing a certain role in the process of climate change governance. The *Urgenda Case* has been described as ‘the very first court decision ... that orders a state to limit GHG emissions for reasons other than statutory mandates’.¹ However, the *Urgenda Case* sparked a more practical debate on whether the court’s setting of climate targets is appropriate, questioning the capacity of such targets to foster enhanced action on climate change mitigation.² The urgent task is to find the best way for judicial response to climate issues under the framework of global climate governance—giving full play to the role of judicial participation in governance while avoiding excessive judicial intervention in climate response.

Climate change litigation (CCL) refers to substantial or policy-oriented litigation concerning the causes and impacts of climate change, initiated by the parties or raised by the court based on facts or legal grounds. As long as lawsuits directly or explicitly mention keywords such as mitigation, adaptation, greenhouse gas emissions, sea-level rise, etc., they fall within this definition, even if climate change is not the central focus of the dispute.³ At present, there are two approaches to global justice in dealing with climate change: the rights approach and the obligations approach. By analyzing the development trend of global CCL and comparing the specific advantages of different approaches in addressing climate change governance, it can be known that the development of CCL based on the rights approach faces many substantive and procedural difficulties.⁴ The obligations approach is in line with the mainstream trend of China’s ecological civilization construction, and can become the basis of China’s CCL. The existing administrative public interest litigation in China precisely meets the requirements of the obligations approach.

This paper aims to explore a judicial relief path that can achieve China’s ‘dual carbon’ goals. Section II explains the obligation path of CCL, that is, the concept and characteristics of administrative public interest litigation.

1 Jaap Spier, *The ‘Strongest’ Climate Ruling Yet: The Dutch Supreme Court’s Urgenda Judgment*, 67 *Netherlands International Law Review* 319 (2020).

2 Benoit Mayer, *The Contribution of Urgenda to the Mitigation of Climate Change*, 35 *Journal of Environmental Law* 168 (2023).

3 He Xiangbai, *Mitigation and Adaptation Through Environmental Impact Assessment Litigation: Rethinking the Prospect of Climate Change Litigation in China*, 67 *Transnational Environmental Law* 416 (2021).

4 Lin Jolene, *Climate Change and the Courts*, 32(1) *Legal Studies* 37 (2012).

Section III analyzes the path choice of China's CCL, which mainly discusses the content, governance tools, and judicial protection of China's 'dual carbon' legal system. Section IV focuses on the legal potential of China's response to the 'dual carbon' goals through administrative public interest litigation, which is inseparable from China's exploration of the procuratorial public interest litigation system. Different from CCL in other countries, China's administrative public interest litigation system has achieved good results in practice. Section V further discusses how to construct China's CCL system under the framework of climate governance, which needs to focus on the balance between executive power and judicial power.

II. THE ROLE OF JUSTICE IN GLOBAL CLIMATE GOVERNANCE

A. The Process of Global Climate Change Litigation

The issue of climate change has always been regarded as one of the few public issues with a global consensus, and it is highly complex. Over the past decade, global climate governance has undergone two significant transitions, shifting from climate change being considered a scientific issue to a social-political issue, and then to a legal issue.⁵ During the transition from socio-political to legal stage, CCL has played a crucial role and has become an integral part of the global climate governance framework. According to data compiled by the Sabin Center for Climate Change Law at Columbia University and the Grantham Research Institute on Climate Change and the Environment, there have been a total of 3,920 climate change-related cases worldwide, encompassing diverse forms of litigation.⁶

Combined with the different objects of litigation, CCL can be divided into the following categories. The first is civil litigation. Climate change investor litigation is a typical case of such litigation. For example,

⁵ Du Qun, *The Empirical Significance of the Paris Agreement for the Development of Climate Change Litigation*, 7 Political Science and Law 49 (2022).

⁶ The vast majority of these climate change lawsuits occurred in the United States, with a total of 2,626 cases, accounting for 67%, more than the total of 1,294 cases in other countries and regions. Cases outside the United States mainly occur in Australia, the European Union, the United Kingdom, New Zealand, Canada, and Spain in terms of quantity. Among the 1,294 climate lawsuits, 948 sued the government and 228 sued businesses or individuals. Among the 948 cases filed against the government, 242 were related to greenhouse gas emissions reduction and trade, 312 were related to environmental assessment and licensing, 183 were related to human rights, 48 were related to biodiversity and ecosystem protection, 28 were related to information disclosure, 15 were related to climate adaptation, and 6 were related to public trusts. See SABIN CENTER FOR CLIMATE CHANGE LAW, CLIMATE CHANGE LITIGATION DATABASES: U.S. CLIMATE CHANGE LITIGATION, GLOBAL CLIMATE CHANGE LITIGATION, at <http://climatecasechart.com> (Last visited on July 17, 2025).

shareholders sued listed companies that ignored climate change risks in their investment decisions or failed to disclose relevant climate risks in their information disclosure, resulting in losses to investors' interests.⁷ Such cases are generally civil disputes that are helpful to greenhouse gas emissions targets. However, lawsuits against the greenhouse gas reduction obligations of multinational high-carbon emitters will be more contentious.⁸ Because these emitters are not only stakeholders, but also act as plaintiffs in lawsuits against administrative agencies, and apply to the court to review the administrative regulation or legislation that is unfavorable to them, so as to avoid such private lawsuits.⁹ The second is administrative litigation. In most cases, the government is the defendant, and the plaintiff petitions the court to review whether the government's decisions violate the *Constitution*, laws, or policy objectives. One is a lawsuit against a government action or decision. The plaintiff sought to prove that the agency's decision was unlawful or unreasonable. Among them, unreasonable criteria for judgment are the legitimacy, transparency, and recognizability of climate change decisions.¹⁰ The other is against the illegality of the administrative decision process. Taking environmental impact assessment as a typical example, the plaintiff believes that there is a causal relationship between the government's administrative actions that do not consider environmental impact and climate change.¹¹ The third is human rights litigation. After the *Paris Agreement*, CCL, based on rights protection, has grown rapidly, and the scope of cases has been expanding.¹² Human rights-related CCL exists at both the national and regional levels. *Asghar Leghari v. Leghari* is a successful case of human rights-based CCL. The case attempted to link human rights with climate change and successfully persuaded domestic courts to view the issue through a human rights lens in litigation.¹³ At the regional level, the European Court of Human Rights has heard cases based on the human rights protection provisions of the *European Convention on Human Rights*. For example, in *Duarte Agostinho and Others v. Portugal and 32 Other States*, children and

7 Du Qun & Li Ziqing, *Empirical Analysis of Extraterritorial Climate Change Litigation*, 3 *Jingchu Law Review* 90 (2023).

8 *Native Village of Kivalina v. Exxon Mobil Corp.*, No. C08-01138-SBA, at 1, N.D. Cal. Feb. 26, 2008.

9 *Private Corporation for the Development of Aysen, et al. v. Environmental Evaluation Service of Chile* (2016).

10 FRANCESCO SINDICO & MAKANE MOISE MBENGUE, *COMPARATIVE CLIMATE CHANGE LITIGATION: BEYOND THE USUAL SUSPECTS*, at 13 (Springer, 2021).

11 *Citizens' Committee on the Kobe Coal-Fired Power Plant v. Japan* (2018).

12 JOANA SETZER & CATHERINE HIGHAM, *GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2021 SNAPSHOT*, at https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf (Last visited on July 19, 2025).

13 Van O. Geel, *Urgenda and Beyond: The Past, Present and Future of Climate Change Public Interest Litigation*, 3 *Maastricht University Journal of Sustainability Studies* 56-58 (2017).

young people living in Portugal have accused Portugal and 32 other countries of failing to take consistent collective measures to reduce emissions in line with the 1.5°C target of the *Paris Agreement*.

*B. The Concept and Characteristics of
Administrative Public Interest Litigation Under
Global Climate Governance*

Global CCL has generally gone through three stages: the first generation sought to incorporate climate change considerations into government decision-making, the second generation aimed to hold governments and corporations liable for damages, and the third generation, driven by the *Paris Agreement*, gradually shifted towards strategic litigation.¹⁴ Based on the aforementioned data, it is evident that litigation aimed at influencing government decisions is the primary approach in CCL. This is because climate change, as a cross-cutting issue, is closely related to national policies and environmental laws, making it impossible to bypass the government as a key stakeholder in CCL.¹⁵

From the perspective of the United States, the executive agency favors organized interests, especially those of regulated or protected commercial enterprises and other groups of organizations, while harming dispersed and relatively unorganized interests when implementing broad legislative directives,¹⁶ causing vulnerable groups to seek judicial redress. In this regard, the court, driven by activism, has continuously expanded the scope of litigation qualification, burden of proof, judicial jurisdiction, and so on. Among them, the plaintiff initiates a lawsuit and seeks judicial review when the government's public policy and administrative projects have not been formally implemented. Such litigation is also known as 'policy-oriented public interest litigation'.¹⁷ Looking at the origin of CCL in the United States, the earliest case was *City of Los Angeles v. National Highway Transportation Safety Administration (NHTSA)*,¹⁸ in which cities, states, and environmental

14 Gao Lihong, *The Legal Path of Climate Litigation in China: A Study of Comparative Law*, 1 Journal of Shandong University (Philosophy and Social Sciences) 167 (2022).

15 Richard J. T. Klein, Siri E. H. Eriksen & Lars O. Naess et al., *Portfolio Screening to Support the Mainstreaming of Adaptation to Climate Change into Development Assistance*, 84 Climatic Change 3 (2007).

16 RICHARD B. STEWART, *THE REFORMATION OF AMERICAN ADMINISTRATIVE LAW*, at 24-25 (Shen Kui trans., The Commercial Press, 2011).

17 Lee A. Graybeal, *The Private Attorney General and the Public Advocate: Facilitating Public Interest Litigation*, 34 Rutgers Law Review 350 (1982).

18 912 F.2d 478 (D.C. Cir 1990).

organizations sued NHTSA for failing to consider the adverse impacts of reducing fuel economy standards for motor vehicles on climate change under the *National Environmental Policy Act*. Although the case did not receive support, it became a ‘prototype’ for CCL in the United States. Subsequent litigation aimed to promote or prevent federal and state governments from regulating greenhouse gases based on environmental laws, requiring the consideration of climate change when reviewing power plant projects, and describing climate change as a public nuisance.¹⁹ This kind of litigation, by adjusting the future behavior rather than remedying the existing damage, forms the preventive administrative public interest litigation.

Therefore, its characteristics can be summarized as preventive, procedural and public in nature. The first is preventive nature. Among the known environmental risks, the risk of climate change is the most typical. The *China-UK Cooperation Climate Change Risk Assessment* classifies climate change risks into three types: emission risks, direct risks, and systemic risks.²⁰ The administrative public interest litigation is aimed at the climate risk, trying to reduce the risk by influencing the regulatory behavior of administrative organs toward greenhouse gas emitters. The second is procedural nature. Some scholars have found that the defendants in most climate change lawsuits are governments, and the plaintiffs are individuals and non-governmental organizations.²¹ Administrative public interest litigation emerges in such mainstream, and pays more attention to the various actions of administrative organs to deal with climate change, covering policy objectives, administrative decisions, administrative law enforcement, and so on. The third is public nature. Although climate change will eventually cause personal harm, it does not mean that individuals can directly bring lawsuits.²² Administrative public interest litigation is also launched based on the maintenance of public interests, through litigation procedures to bring the actions of public institutions before the court, discuss whether their actions have implemented the national climate policy, and whether they have violated the national provisions on the right to life.

19 JACQUELINE PEEL & HARI M. OSOFSKY, *CLIMATE CHANGE LITIGATION: REGULATORY PATHWAYS TO CLEANER ENERGY*, at 19 (Cambridge University Press, 2015).

20 CHINA INTERNATIONAL CLIMATE CHANGE EXPERT COMMITTEE AND UK CLIMATE CHANGE COMMITTEE, *CHINA-UK COLLABORATIVE CLIMATE CHANGE RISK ASSESSMENT: RESEARCH ON CLIMATE RISK INDICATORS*, at 7 (China Environmental Publishing Group, 2019).

21 Du Qun & Li Ziqing, *supra* note 7, 92.

22 Gerd Winter, *Armando Carvalho and Others v. EU: Invoking Human Rights and the Paris Agreement for Better Climate Protection Legislation*, 9(1) Transnational Environmental Law 141 (2020).

C. Advantages of Administrative Public Interest Litigation in Addressing Climate Change

Administrative public interest litigation is different from other litigation, as it is a new path in the field of climate, based on the goal of public interest protection. This design is mainly due to the unique legal structure of this litigation, which can become the reform approach of judicial response to climate change.

First, realizing the judicial protection for the obligation of national risk prevention. When the state fulfills the obligation of environmental protection and takes necessary actions, it needs to use various state powers, including judicial power. In order to deal with the climate change issue, a kind of climate policy-driven justice has emerged in Europe, America, and developing countries.²³ This kind of justice approach is manifested as: taking the state as the defendant and demanding that governments adopt more effective policies. Among them, there are cases where the implementation of national commitments on climate change is examined in the framework of fundamental rights,²⁴ or climate change is interpreted as a legal obligation of states.²⁵

Second, breaking through the target of CCL—the risk of carbon emission regulation. From a scientific perspective, climate change cannot establish a clear causal relationship with specific harm outcomes. This type of climate change risk has an irreparable nature of damage. That is, once the damage results occur and cause damage to public interests, even if relief is taken afterwards, it is difficult to restore the previous state, and it is even harder to achieve effective relief and compensation. This situation is similar to irreparable damages, such as the passage of time, harm to life and health, and the destruction of other significant interests, where remedies are difficult to achieve. Instead, by intervening in the sources of danger through the regulatory actions of public institutions, people's behaviors can be influenced, and ultimately, damage can be avoided.²⁶ These regulatory actions by public institutions typically take the form of establishing regulatory standards, issuing administrative permits, monitoring compliance, and implementing

23 Zhu Mingzhe, *How Does Justice Participate in Climate Governance: Observations from the Perspective of Comparative Law*, 7 Political Science and Law 19 (2022).

24 *Ashgar Leghari v. Federation of Pakistan*, Case No. 25501/2015 (Lahore High Court).

25 *Stichting Urgenda v. State of the Netherlands*, ECLI:NL:HR: 2019:2007.

26 ULRICH PROYES, RISK PREVENTION AS A NATIONAL TASK: A COGNITIVE PREREQUISITE FOR SAFETY, in RISK REGULATION: THEORY AND PRACTICE IN GERMANY, at 153 (Liu Gang ed., Law Press • China, 2012).

administrative penalties, aiming to prevent, control, and mitigate the adverse impacts of climate change. Meanwhile, the ability of administrative agencies to predict environmental risks is limited. Because the perception of climate change risks is likely to exceed cognitive and management capabilities,²⁷ this means that administrative organs need to carry out risk assessment of any activity and make decisions after risk communication. There is a wide range of discretionary space and room for decision, which can easily lead to two extremes of climate change risk, being unable to be effectively identified or over-regulated. At present, administrative public interest litigation, based on the target of administrative regulation, can regulate the generation of such risks by reviewing the decision-making process.

Third, filling the gap in climate change legislation. In addition to the *UK Climate Change Act 2008* and the *German Federal Climate Change Act 2021*, many countries do not have specific legislation to directly address climate change. Therefore, the role of the judiciary is becoming more and more important, and it can even directly affect the process of national legislation. Inspired by the judgment of the *Urgenda Case*, several courts in Europe have set clear targets for national emissions reductions in recent years. In *Ashgar Leghari v. Federation of Pakistan*,²⁸ the court cited *Pakistan's 2012 National Climate Policy and Framework* and the *Framework for Implementation of Climate Change Policy (2014-2030)*, and found that the government's failure to implement the framework violated the fundamental rights of Pakistani citizens and that the government should take further action.

III. PATH SELECTION OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION IN CHINA

A. Arrangement of China's 'Dual Carbon' Legal System

In September 2020, at the General Debate of the 75th Session of the United Nations General Assembly, China made the first commitment to 'have CO₂ emissions peak before 2030 and achieve carbon neutrality before 2060' (the 'dual carbon' goals). With the proposal of these targets, China has initially built a 'dual carbon' policy system from the central to the local

27 Frank B. Cross, *Paradoxical Perils of the Precautionary Principle*, 53 Washington & Lee Law Review 851 (1996).

28 *Ashgar Leghari v. Federation of Pakistan* (W.P.No.25501/2015).

levels and from special regulation to comprehensive adjustment.²⁹ These policy documents further implement the 'dual carbon' goals in terms of overall requirements, main objectives, promoting comprehensive green transformation of economic and social development, deeply adjusting industrial structure, and accelerating the construction of a clean, low-carbon, safe, and efficient energy system. The *Ecological and Environmental Code* being compiled has also added provisions related to 'green low-carbon development', covering many subjects such as the government, enterprises, and consumers, and gradually translating the target into legislative provisions.

From a legal perspective, China's 'dual carbon' legal system is mainly based on the *Constitution*, the *Environmental Protection Law of China*, the *Atmospheric Pollution Prevention and Control Law of China*, the *Energy Conservation Law of China*, the *Renewable Energy Law of China*, the *Circular Economy Promotion Law of China*, the *Forest Law of China*, and other laws. On the one hand, the total amount of carbon emissions generated by production and living activities is directly regulated through administrative regulations and direct market regulation. On the other hand, greenhouse gas emissions are indirectly controlled by limiting or incentivizing the production activities of enterprises. In addition, China is constantly exploring market-based carbon emission management systems, such as the carbon emission trading system and the energy trading system.³⁰ As a result, a carbon emission management system consisting of regulatory systems, incentive systems, and corresponding legal relief systems for carbon emissions, as well as a market mechanism centered on the carbon emission rights trading system, has been formed.

In the process of realizing the 'dual carbon' goals, China has gradually formed a dual structure of parallel policy and law.³¹ Among them, the policy

29 The *Opinions on the Complete, Accurate and Comprehensive Implementation of the New Development Concept and the Work of Carbon Peak and Carbon Neutrality*; The *Carbon Peak by 2030 Action Plan*; The *Guiding Opinions on Promoting the High-Quality Development of Central Enterprises to Achieve Carbon Peak and Carbon Neutrality*; The *Work Plan on Strengthening the Construction of the Talent Training System for Higher Education with Carbon Peak and Carbon Neutrality*; The *Opinions on Financial Support to Achieve Carbon Peak and Carbon Neutrality*; The *Implementation Plan for Carbon Peak and Carbon Neutrality Supported by Science and Technology (2022-2030)*; The *Energy Carbon Peak and Carbon Neutral Standardization Improvement Action Plan*; The *Implementation Plan for Establishing and Improving a Standard Measurement System for Carbon Peak and Carbon Neutrality*; The *Guidelines for the Construction of a Standard System for Carbon Peak and Carbon Neutrality in the Industrial Sector (2023 Edition) (Draft for Comment)*; The *Work Plan for Accelerating the Construction of a Dual Control System for Carbon Emissions*.

30 The *Measures for the Administration of Carbon Emissions Trading of 2020 (for Trial Implementation)*; The *Interim Regulations on the Administration of Carbon Emissions Trading of 2024*.

31 Yu Wenxuan & Hu Zehong, *Law-Policy Synergy and Legal Strategies for the 'Dual Carbon' Goals from the Perspective of Legal Policy*, 4 *China Population, Resources and Environment* 62 (2022).

has played a great role in promoting the law. At present, comprehensive legislation is needed to address climate change or ‘dual carbon’ goals. The existing legal system is scattered in three aspects: energy development and utilization management, pollution prevention, and ecological protection. Among these, energy-related laws, in particular, have become the main areas to achieve ‘dual carbon’ goals. However, these laws were enacted earlier, and the provisions related to carbon emissions are still mainly principled and guiding provisions. The translation of policy requirements into legal provisions should be further refined. For example, as early as the *Resolution on Actively Responding to Climate Change* issued by the Standing Committee of the National People’s Congress in 2009, the idea of formulating comprehensive legislation on climate change was proposed, but the law has not yet been introduced. Additionally, the *Atmospheric Pollution and Climate Change Programme*, which is most closely related to greenhouse gases, does not regard greenhouse gases as pollutants; it adopts coordinated control measures. In terms of ecological protection, while *China’s National Climate Change Programme* and other relevant policies call for enhancing ecosystem carbon sinks, the goal of achieving carbon peak and carbon neutrality has not yet been incorporated into the legislative purposes of the *Forest Law*, the *Grassland Law*, or the *Natural Protected Areas Law* (under formulation).

B. Allocation and Coordination of ‘Dual Carbon’ Governance Tools

Facing the ‘dual carbon’ goals, the government mainly realizes the goals through administrative regulation and market incentives. The former includes the establishment of behavior standards, norms, penalties, etc., aiming at encouraging enterprises and other subjects to regulate behavior through regulatory means. The latter mainly includes the price regulation, tax system, carbon emission trading system, and other market-oriented means to provide a stable economic foundation for the development of enterprises. In the past few years, China’s carbon dioxide emissions have shown a decline. According to the preliminary calculation of the *Report on the State of the Ecology and Environment in China 2024*, the carbon dioxide emissions per 10,000 yuan of GDP in 2024 decreased by 3.4% compared with 2023. By the end of 2024, the cumulative trading volume of quotas in the national carbon emissions trading market reached 630 million tons, with a cumulative trading value of 43.033 billion yuan. Among them, the trading volume and trading value of quotas in 2024 increased by 44% and 110% respectively compared with 2023, and the trading scale continued to expand. In 2024, the total

amount of quotas that key emission units included in the national carbon emission trading market should settle is 5.244 billion tons, with a quota settlement completion rate of 99.98%, reaching the best level in history.³²

At present, 'dual carbon' governance is more dependent on policy implementation. For example, on November 2, 2021, the Central Committee of the Communist Party of China and the State Council jointly issued the *Circular on Further Prevention and Control of Pollution*, which clearly stated that 'the task of achieving carbon peak and carbon neutrality is difficult', and that 'efforts should be made to achieve the synergism of pollution reduction and carbon reduction as the overall starting point, with improving the quality of the ecological environment as the core'. It also emphasized that 'efforts should be strengthened to control non-carbon dioxide greenhouse gas emissions such as methane ... integrate greenhouse gas control into EIA management'. On November 10, 2022, the Ministry of Ecology and Environment and 14 other departments jointly issued the *In-Depth Fight to Eliminate Heavily Polluted Weather, Ozone Pollution Prevention and Control of Diesel Truck Pollution Treatment Plan*, which clearly stipulated that we should coordinate atmospheric pollution prevention and control with the 'dual carbon' goals, carry out synergic action on air pollution reduction and carbon reduction, integrate the planning and promotion of tasks and measures for landmark campaigns with carbon reduction measures, optimize and adjust the industrial, energy, and transportation structures, and reduce air pollutants and carbon emissions from the source.

From the perspective of the operation mechanism of the rule of law, 'dual carbon' governance should be expressed as the overall linkage of carbon-related law enforcement and justice.³³ This linkage is still dominated by administrative regulations, and carbon-related law enforcement agencies with national public power should deal with carbon-related issues in a timely and efficient manner.

C. Administrative Public Interest Litigation Based on Scientific Protection Obligation

The discussion of climate change can be traced back to 1992, the *United Nations Framework Convention on Climate Change (UNFCCC)*,

32 THE MINISTRY OF ECOLOGY AND ENVIRONMENT OF CHINA, REPORT ON THE STATE OF THE ECOLOGY AND ENVIRONMENT IN CHINA 2024, at <https://www.gov.cn/lianbo/bumen/202506/P020250606419033592372.pdf> (Last visited on July 19, 2025).

33 Zhang Zhongmin, Wang Yaqi & Ji Pengfei, *An Outline of the Legal Response to the 'Dual Carbon' Goals*, 4 China Population, Resources and Environment 44 (2022).

article 2 of which clearly defined the goal as ‘to stabilize the concentration of greenhouse gases in the atmosphere at a level that prevents the climate system from being subject to dangerous anthropogenic interference’, and defined the obligation of the contracting parties, especially developed countries, to reduce emissions. The *1997 Kyoto Protocol* set rules to limit global greenhouse gas emissions. In 2009, the United Nations Climate Change Conference in Copenhagen formed the *Copenhagen Protocol*, which once again emphasized the obligation of the parties to reduce emissions. The *Paris Agreement*, adopted by the United Nations Climate Change Conference in 2015, created the Nationally Determined Contributions (NDCs) to reduce emissions. The signing of the *Paris Agreement*, to a certain extent, means that global climate governance has shifted, that is, the modern energy system based on fossil energy has gradually shifted to the core issue of energy substitution.³⁴ With nearly 140 countries around the world declaring carbon-neutral goals, this disruptive replacement of fossil fuels is set to take place on a global scale. NDCs establish a top-down approach to greenhouse gas emissions reduction that encourages parties to participate while respecting their operational space.

In China, the state’s public law obligation to protect the environment has become a feasible way.³⁵ The *2018 Amendment to the Constitution of China* makes provisions on the fundamental tasks of the country: implementing the concept of green development, promoting ecological civilization, and building a beautiful China. In order to fulfill tasks stipulated in the *Constitution*, the legislative, judicial, administrative, and other state organs must actively fulfill their corresponding obligations.³⁶ This obligation is not premised on the creation of rights or the necessity of reality, as the strategies and policies implemented in China to address climate change are based on proactive, autonomous, and scientific decision-making, while still protecting citizens’ environmental rights. China’s judicial paradigm innovation, such as the reform of environmental justice specialization, the development of environmental justice specialization, and the active linkage mechanism of environmental justice, can provide fair and efficient judicial services and guarantees for the realization of the ‘dual carbon’ goals. Even if the legal norms are inadequate, the courts still need to respond to climate change issues

34 Chen Hongyan, *The Competition of Global Climate Governance Under the Goal of Carbon Neutrality and China’s Countermeasures*, 3 *Studies in Law and Business* 4 (2023).

35 Feng Ru, *A Systematic Interpretation of the Green Provisions of the Civil Code: From the Perspective of Citizens’ Environmental Obligations*, 4 *Journal of Huazhong University of Science and Technology* (Social Science Edition) 123 (2021).

36 Dou Xiaodong & Ye Zhou, *Traceability of National Environmental Obligations and Their Normative Certification*, 1 *Journal of Soochow University* (Philosophy & Social Science Edition) 79 (2020).

under the principle that judges shall not decline to render judgment. The 'dual carbon' governance involves the government, enterprises, individuals, and third parties (carbon trading institutions, third-party verification institutions, etc.). Among them, the administrative organ is the leading force to achieve the 'dual carbon' goals, which are mainly carried out through the right operation and power supervision. Administrative public interest litigation is a more appropriate way in the judicial field. Compared with directly suing carbon emission subjects, administrative public interest litigation faces fewer obstacles in the identification of causality³⁷ and litigation regulation methods. According to the *Barometer of the Completion of Dual Control Targets for Energy Consumption in Various Regions in the First Half of 2021* issued by the National Development and Reform Commission, individual local governments did not implement the detailed national overall plan during the carbon peak, and still approved the 'two-high' projects before the carbon peak,³⁸ the essence of which lies in the lack of effective supervision channels. Therefore, on the basis of the logical conclusion of climate science, China can further promote administrative organs to actively fulfill their scientific protection obligations through litigation, and rationally refer to the quantitative objectives of temperature control established by the *Paris Agreement*.

IV. LEGAL POTENTIAL OF CHINA'S RESPONSE TO 'DUAL CARBON' GOALS THROUGH ADMINISTRATIVE PUBLIC INTEREST LITIGATION

A. Legal Framework on Administrative Public Interest Litigation

Administrative public interest litigation is an important approach to preventing and mitigating environmental issues in China. As early as 2014, article 53 of the *Administrative Procedure Law of China* stipulated that when a party files a lawsuit against administrative actions, they can also request a legality review of the normative documents involved. In July 2015, China initiated a pilot program for administrative public interest litigation through the *Reform Pilot Program for Procuratorial Organs to Initiate Public Interest Litigation*, and in 2017, the administrative public interest litigation system was formally established under article 25(4) of the *Administrative*

37 OLIVER W HOLMES, *THE COMMON LAW*, at 95 (Dover Publications, 1991).

38 The *Barometer of the Completion of Dual Control Targets for Energy Consumption in Various Regions in the First Half of 2021* issued by the National Development and Reform Commission.

Procedure Law.³⁹ However, the existing legal basis only includes these two provisions, and issues regarding litigation procedures and other matters have not been clearly defined. As a result, there is a discrepancy between the legal framework and the practices of administrative public interest litigation, leading to different approaches.⁴⁰ To address this issue, the Supreme People's Procuratorate issued the *Interpretation on Several Issues Concerning the Application of Laws in Procuratorial Public Interest Litigation Cases* in 2018 to clarify the procedural rules for administrative public interest litigation. Administrative public interest litigation mainly supervises the failure of administrative agencies to perform their duties under the law, focusing on whether administrative agencies have 'fulfilled duties based on legal grounds', 'adequate fulfillment of duties', 'efficient execution of responsibilities', and other key issues.⁴¹ In February 2023, the Supreme People's Court issued the *Opinions on the Complete, Accurate and Comprehensive Implementation of the New Development Concept and the Provision of Judicial Services for Actively and Steadily Promoting Carbon Peak and Carbon Neutrality*, emphasizing that judicial organs should give full play to their role in addressing climate change.

While administrative public interest litigation in China currently has limited reach in climate change oversight, its framework holds promising potential to expand into this critical field. Since 2009, local governments have started beneficial explorations, such as the *Tianjin Municipal Regulation on Promoting Carbon Peak and Carbon Neutrality*, *Qinghai Provincial Measures for Addressing Climate Change*, and *Shanxi Provincial Measures for Addressing Climate Change*. These local regulations focus on the legalization of responsibility setting and assessment mechanisms for lower-level government departments, providing requirements for the government and its departments in greenhouse gas emissions reduction or adaptation. Furthermore, China has vigorously developed green and low-carbon Public-Private Partnership (PPP) projects in recent years. By

39 According to paragraph 4 of article 25 of the *Administrative Procedure Law*, if the people's procuratorate discovers, in the performance of its duties, that administrative organs responsible for supervision and management in areas such as ecological environment and resource protection, food and drug safety, state-owned property protection, and the transfer of state-owned land use rights have illegally exercised their powers or failed to act, resulting in infringement of national or social public interests, it shall submit procuratorial suggestions to the administrative organs to urge them to fulfill their duties in accordance with the law. If an administrative organ fails to perform its duties in accordance with the law, the people's procuratorate shall bring a lawsuit to the people's court in accordance with the law.

40 Wang Chunye, *On Developing a Special Legal System for Public Interest Administrative Litigation*, 1 Peking University Law Journal 168 (2022).

41 Li Dan, *Normative Construction of Preventive Environmental Public Interest Litigation in State Governance System*, 2 Law Review 183-184 (2023).

the end of October 2022, China had signed contracts for 5,911 pollution prevention and control, as well as green and low-carbon PPP projects, with a total investment of 5.7 trillion yuan, accounting for 41% of the total investment in all signed projects.⁴² The *Provisions on Several Issues Concerning the Trial of Administrative Agreement Cases* issued by the Supreme People's Court in November 2019 clearly states that most PPP agreements have the nature of administrative agreements. In addition, illegal activities related to climate change have also been included in the scope of administrative penalties. The chapter on climate resource development, utilization, and protection in the *Meteorology Law of China of 2016* specifies the requirements for the government to make key plans for climate resource development and conduct climate feasibility assessments for projects related to climate resource development and utilization. In 2022, the China Meteorological Administration issued the *Measures for Administrative Penalties in Meteorology*, which clarify the specific procedural rules for administrative penalties.

Therefore, in the field of climate change, administrative organs face increasingly demanding governance tasks under the 'dual carbon' goals, and the failure of administrative organs to perform their duties following the law will exacerbate the environmental risk problem. It is necessary to strengthen the direct supervision of executive power through administrative public interest litigation initiated by legal subjects, which mainly focuses on two stages. In the stage of administrative regulation of carbon emission risk, environmental administrative organs should be urged to regulate carbon emission risk, rather than taking the carbon emission result as the dominant judgment standard. In the stage of administrative enforcement, the legality of administrative acts is examined in a procedural manner to prevent risks from arising.

B. Practical Achievements of Administrative Public Interest Litigation in China

In China, procuratorial organs are the only eligible subjects to initiate administrative public interest litigation. The cases cover supervision, punishment, and recycling of fake and shoddy food, environmental protection, recovery of state property, and recycling and cleaning up all

42 THE MINISTRY OF FINANCE OF THE PEOPLE'S REPUBLIC OF CHINA, BOOSTING GLOBAL LOW CARBON AND SUSTAINABLE DEVELOPMENT THROUGH PPP MODEL, at https://sd.mof.gov.cn/zt/dcyj/202212/t20221228_3860891.htm (Last visited on July 21, 2025).

kinds of garbage and solid waste. On June 30, 2022, the Supreme People's Procuratorate announced that from July 2017 to the end of June 2022, more than 670,000 public interest litigation cases had been filed, including 614,000 administrative public interest litigation cases. Procuratorial organs issued more than 520,000 pre-trial procuratorial suggestions for public interest litigation. The rate of administrative agencies' response to the pre-litigation stage has continued to rise from 97.2% in 2018 to 99.5% in 2021.⁴³ In 2024, procuratorial organs across the country initiated a total of 9,409 lawsuits, among which 1,160 were administrative public interest lawsuits, accounting for 12.3%, an increase of 2.2% year-on-year. The court's support rate for administrative public interest litigation judgments was 96.8% respectively.⁴⁴

From the perspective of the accused's behavior, the procuratorial organ generally initiates the action of omission based on the administrative organ's failure to perform its duties according to law.⁴⁵ From the judgment method, it is mainly limited to 'confirm the violation', 'confirm the violation + perform duties', and 'confirm the violation + perform duties + take remedial measures'.⁴⁶ It is worth noting that China's administrative public interest litigation has a 'soft' means of pre-litigation procedures. The procuratorial organs formulate and send procuratorial recommendations, and the administrative organs with environmental protection responsibilities perform their duties independently and actively after receiving the procuratorial recommendations. In practice, the pre-litigation procedure has become the main means for the procuratorial organs to supervise the administrative organs to perform their duties, and many cases have been implemented in place before the trial. On the whole, prosecutorial organs win relatively large cases and lose very few cases.

China's administrative public interest litigation has three basic characteristics: judicial nature, modesty, and reliance.⁴⁷ The judicial nature lies in the fact that articles 6, 7, and 8 of the *Organic Law of the People's Procuratorates of China* stipulate that procuratorial organs belong to a

43 THE SUPREME PEOPLE'S PROCURATORATE ANNOUNCED THE FIFTH ANNIVERSARY OF THE PROCURATORIAL ORGANS' COMPREHENSIVE IMPLEMENTATION OF PUBLIC INTEREST LITIGATION: MORE THAN 670,000 PUBLIC INTEREST LITIGATION CASES WERE FILED IN FIVE YEARS, at https://www.spp.gov.cn/spp/xwfbh/wsfbt/202206/t20220630_561637.shtml#1 (Last visited on July 21, 2025).

44 THE SUPREME PEOPLE'S PROCURATORATE, WHITE PAPER ON PUBLIC INTEREST LITIGATION PROCURATORIAL WORK (2024), at https://www.spp.gov.cn/xwfbh/wsfbh/202503/t20250309_688675.shtml (Last visited on July 21, 2025).

45 Liu Chao, *Practice Investigation and System Development of the Scope of Environmental Administrative Public Interest Litigation*, 4 *Journal of Political Science and Law* 50 (2017).

46 Tang Shaojun, *Parallel Application of Affirming Law-Breaking and Performing Duties in Environmental Administrative Public Interest Litigation Judgment and Its Rectification*, 5 *Administrative Law Review* 98 (2023).

47 Yu Lingyun, *The Theoretical Construction of Procuratorial Administrative Public Interest Litigation*, 5 *Administrative Law Review* 87 (2023).

power system with legal supervision attributes centered on litigation power. Administrative public interest litigation is a way for procuratorial organs to exercise litigation functions. First, they supervise administrative organs through pre-litigation procedures, and only after consultation fails can they initiate litigation procedures. The modesty lies in the fact that administrative public interest litigation is a means of external administrative supervision. Even if the administrative organ is found to have violated the law or failed to act, the procuratorial organ cannot directly intervene in the administrative organ, and it should be preferentially transferred to the administrative organ after finding the clues of the case. In contrast, the supervision of the upper and lower levels of the administrative department and the supervision of the state are better than litigation supervision. Reliance means that the litigation power of the procuratorial organ is essentially the 'right to claim' in the meaning of procedure,⁴⁸ rather than entity decisions. Neither prosecutorial recommendations nor litigation requests can go beyond court decisions. It can be said that China's administrative public interest litigation system has been basically implemented and achieved good results. For instance, the procuratorial organs have a high rate of successful cases and a high rate of procuratorial proposals for rectification, and the scope of accepted cases has expanded from administrative acts to administrative activities. These judicial practices can provide better support for the national response to climate change. Especially in China, where the judicial system actively promotes the practice of CCL, administrative public interest litigation should become the core force of 'dual carbon' judicial protection.

C. Addressing Legal Challenges in Administrative Public Interest Litigation on Climate

China's response to climate issues through administrative public interest litigation will face two main challenges. The first is the scope of the exercise of judicial power. China's judicial review of administrative public interest litigation is limited to specific administrative acts—specifically, whether there is 'illegal exercise of power or inaction'. According to article 53 of the *Administrative Procedure Law of China of 2014*, a party may request a legality review of the normative document when filing a lawsuit against an administrative act. This has not yet emerged in judicial practice. In the US judicial practice, the Environmental Protection Agency (EPA) was granted

48 Lyu Tao, *Legal Analysis of Procuratorial Suggestions*, 2 Legal Forum 109-110 (2010).

the authority to establish greenhouse gas emission standards for new motor vehicles under the *Clean Air Act* in the case of *Massachusetts v. EPA*.⁴⁹ This litigation prompted the EPA to undertake a series of rule-making activities, such as releasing a study on the adverse effects of motor vehicles on public health and welfare, setting greenhouse gas emission standards for light-duty and heavy-duty vehicles, and limiting emissions from stationary sources such as power plants. Since 2015, judicial institutions have also been strengthening their research on CCL, going through three stages from ‘passive judiciary’ to ‘weakly active judiciary’ and finally to ‘strongly active judiciary’.⁵⁰ The review of regulatory documents in the field of climate is very important, and the scope of the review can be consistent with the provisions of the *Administrative Reconsideration Law of China*, that is, excluding administrative regulations, rules and regulatory documents issued by the State Council, and only including regulatory documents formulated by administrative bodies such as departments of the State Council, local people’s governments and their working departments.⁵¹

The second is the form of judicial response to policy. CCL cases in China include the civil lawsuit based on carbon emissions trading,⁵² carbon trading,⁵³ and energy substitution,⁵⁴ the civil public interest lawsuit against the large enterprise requesting it to reduce its emissions of air pollutants,⁵⁵ the administrative public interest lawsuit against the government for improper disposal of garbage,⁵⁶ and administrative litigation concerning administrative compensation for adaptation to climate change.⁵⁷ On the one hand, the Supreme People’s Court formulates judicial policies to guide judicial trials. On the other hand, courts at all levels try to implement policies as supplementary materials to legal interpretations in individual cases, which makes CCL in China inevitably appear in administrative and civil cases. Actually, there are only two cases that are truly related to climate change,

49 *Massachusetts v. EPA*, 549 US497 (2007).

50 Zhao Yue, *Study on ‘Moderate Climate Judicial Activism’ in China Under ‘Dual Goals’: A Comparative Perspective and Realization Pathways*, 2 *Journal of China University of Geosciences (Social Sciences Edition)* 31 (2023).

51 Ying Songnian, Hu Weilie & Zhang Buhong, *The Reform and Improvement of the Procuratorial Supervision System in Administrative Proceedings*, 3 *Journal of National Prosecutors College* 67 (2015).

52 No.800 Civil Final Judgment of Nanchang Intermediate People’s Court of Jiangxi Province (2017); No. 2940 Civil First Judgment of Huadu District People’s Court of Guangdong Province (2020).

53 No.14459 Civil First Judgment of Beijing Daxing District People’s Court (2013).

54 No.16 Civil Final Ruling of Yunnan High People’s Court (2015).

55 No.1 Civil First Judgment of Dezhou Intermediate People’s Court (2015).

56 No.2 Administrative First Judgment of Wenshan People’s Court of Yunnan Province (2020).

57 Zhang Zhongmin, *The Chinese Paradigm of Climate Change Litigation: A Discussion on Its Relationship with the Compensation System for Ecological Environmental Damage*, 7 *Political Science and Law* 35 (2022).

one of which is the case of the Gansu Branch of the State Grid abandoning wind and light, which reached a mediation agreement on April 10, 2023.⁵⁸ The other example is another wind and light abandonment case brought by Friends of Nature against Ningxia Power Grid Company in 2018, in which the parties reached a mediation agreement. Observing global climate cases, the judiciary has assumed more responsive functions. For example, the German Constitutional Court's order⁵⁹ states that the *Climate Protection Act* delays deeper emissions cuts in the future. This practice of 'offloading' emissions reductions into the future interferes with the fundamental rights of young claimants, so the current target has a 'similar effect of early interference'.⁶⁰ In China, this kind of tactical litigation to push the legislature or the executive to act has not yet occurred. In contrast, when China's climate policies have greatly promoted climate governance, judges should review whether the climate policies comply with international conventions or commitments through litigation, and can apply climate policies as a basis to judge whether the public power has fully implemented the policies, rather than just staying at the implementation stage.

V. INSTITUTIONAL CONSTRUCTION OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION IN CHINA

A. Positioning of Administrative Public Interest Litigation in China's Climate Governance

Administrative power has been evolving, seeking to fully protect the public interest, while judicial power focuses on effectively controlling administrative power to ensure that its exercise does not deviate from the basic track of safeguarding the public interest.⁶¹ Currently, in the Chinese context, the 'action for national voluntary contributions' has transformed into the 'action for dual carbon goals', forming a distinctively Chinese climate change policy system characterized by goal-oriented planning, proactive

58 State Grid Gansu Electric Power Company promised to invest 1.98 billion yuan in the early period of the '14th Five-Year Plan', and continue to invest at least 913 million yuan in the later period of the '14th Five-Year Plan' for the construction of new energy supporting power grids to enhance new energy power generation and transmission capacity.

59 *Order of the First Senate of the Court* (Beschluss des Ersten Senats), March 24, 2021, 1 BvR 2656/18—paras 1-270, April 29, 2021.

60 Petra Minnerop, *The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court*, 1 *Journal of Environmental Law* 136 (2022).

61 Wang Mingyuan, *On the Development Direction of Environmental Public Interests Litigation: Analysis on Administrative Right and Jurisdiction*, 1 *China Legal Science* 49 (2016).

administrative measures, market mechanisms, and pilot demonstrations.⁶² This means that the core subject of the ‘dual carbon’ goals obligation remains the government, which must regulate carbon emissions by private entities through a series of quantified measures, and such regulatory measures should be subject to procedural norms.

Based on the fundamental stance of the ‘rule of law theory’, the development of climate change governance paths requires a ‘proper understanding of the inherent differences between judicial power and administrative power in terms of nature and characteristics, and should emphasize the supervisory and complementary role of judicial power over administrative power when exercising its dominant role’.⁶³ Administrative power possesses characteristics such as initiative, efficiency, expertise, and flexibility, while judicial power possesses characteristics such as neutrality, restraint, authority, and finality. However, since administrative power is the primary force in climate change governance, two trends are inevitable. First, there is passive enforcement by administrative agencies. Although administrative power has initiative, it does not necessarily mean that it will actively choose to participate in the process of climate change. Especially when the situation of ‘administrative institutions are floating above the grassroots level of society’⁶⁴ arises, the upward transfer of law enforcement authority weakens the authority at the grassroots level, leading to a negative attitude of administrative agencies in dealing with new environmental issues. Second, mandatory administrative power has shown an expansion of discretionary powers. To ensure the effectiveness of regulating the risks of climate change, the most appropriate approach is ‘to achieve the goal of controlling administrative power through a reasonable procedure’.⁶⁵ Therefore, judicial authorities can intervene through litigation procedures, supervise and urge administrative agencies to fulfill their duties following the law, and achieve the objectives of exercising administrative power. In summary, when there are uncertainties in legal concepts and the existing legal system and standards cannot regulate significant risks that may occur, administrative agencies can take temporary regulatory measures based on risk

62 Fan Ying & Mo Jianlei, *Progress, Achievements and Future Prospects of China's Policies and Actions Tackling Climate Change: An Interpretation of Part 4 of China's Fourth National Assessment Report on Climate Change*, 1 *China Population, Resources and Environment* 93-99 (2023).

63 Lin Lihong, *The Relationship Between Administrative Power and Judicial Power*, 2 *Modern Law Science* 55-58 (2000).

64 Li Yongjun & Cai Sumei, *The Dual Orientation of Administration and Justice in Diversified Dispute Resolution*, 1 *Journal of National Prosecutors College* 126 (2020).

65 Ji Tao, *The Expansion and Control of Administrative Power: A New Interpretation of the Core Concept of Administrative Law*, 2 *China Legal Science* 88 (1997).

assessment results, and their administrative judgments should be respected. If the effect of administrative regulation is not satisfactory, administrative public interest litigation should be initiated to ensure the effectiveness of risk-based administrative regulation, and it should have legality, procedural requirements and necessity.

Administrative supervision does not necessarily mean the absolute exclusion of supervision over the behavior of carbon-emitting entities. Even though global climate control policies and targets are decentralized by national governments, their implementation ultimately relies on the private sector and individuals. Aside from private interest litigation between private entities, preventive civil public interest litigation⁶⁶ in China can also contribute to the 'dual carbon' goals by providing supplementary remedies. This type of litigation typically targets the end-state of carbon emission activities, where institutions and private sectors violate greenhouse gas control obligations, resulting in negative impacts such as biodiversity and ecosystem damage. Statutory entities can file lawsuits demanding remedies, such as restoration, biodiversity and ecosystem recovery measures, or alternative adaptive measures, to eliminate hazards and restore damages caused by climate change. Before this, administrative authorities should exhaust all kinds of administrative means for handling administrative counterparts.

B. Conditions for Administrative Public Interest Litigation

Research on the government's emission reduction path is helpful to identify the object of litigation. Government obligations can be decomposed as follows. The first is the obligation from policy. It refers to the policies and plans adopted by local governments under the emission reduction targets set by the country. For example, a court may find that the government is obligated to impose certain types of regulations on the electric power sector or the transportation sector based on the best available mitigation techniques. The second is the legal obligation. It relies both on conventions such as the *Paris Agreement* and on governments' carbon budgets. The court will have to consider legal issues raised by the *Paris Agreement's* climate targets, including whether net-zero emissions pledges are misleading or whether developed and developing countries have differentiated responsibilities.⁶⁷ Courts also need to assess governments' climate obligations regarding

⁶⁶ Article 55 of the *Civil Procedure Law of China*.

⁶⁷ JOE THWAITES & JULIE BOS, A BREAKDOWN OF DEVELOPED COUNTRIES' PUBLIC CLIMATE FINANCE CONTRIBUTIONS TOWARDS THE \$100 BILLION GOAL, at <https://doi.org/10.46830/writn.20.00145> (Last visited on July 21, 2025).

(i) historical, current, or future greenhouse gas emissions; (ii) geographical, consumption, or production emissions; (iii) total or per capita emissions; and (iv) a hybrid approach combining emissions accounting methods.⁶⁸ The third is the administrative act. It refers to the content of the obligation of an administrative agency when implementing an administrative order, penalty, or enforcement measure, such as how to weigh historical fossil fuel use when defining a fair share of future production or consumption. This approach to enacting mitigation obligations is particularly important when litigants challenge government approval of fossil fuel production, transportation, and processing infrastructure.

In terms of scientific evidence of causation, courts have relied on public documents such as the *Intergovernmental Panel on Climate Change Reports* to support the causal findings of greenhouse gas emissions.⁶⁹ Although this scientific evidence is not the most advanced, it has become the authoritative source for courts to determine the facts, but it cannot be the only source of evidence. Climate change is a ‘multi-scale’ regulatory issue involving governance at local, state, national, regional, and international levels.⁷⁰ Therefore, the establishment of scientific and reasonable assessment methods and standards for carbon emissions risks is crucial to improve the judicial response ability, including the vulnerability of the specific region or object where the carbon emission behavior is located,⁷¹ the results of administrative assessment and expert opinions, etc., to ensure that the court can make accurate legal judgments based on scientific assessment.

Compared with climate science evidence, the standards for judicial review are of great significance. If CCL is to be treated like any other litigation scenario on scientific evidence, then the narrative around climate science, as well as public perception and the legal response to it, must change.⁷² It needs to consider two elements: one is the cost-effectiveness of the activity related to carbon emissions. The judiciary needs to consider the possible environmental and socio-economic impacts of decisions from a long-term perspective. The other is to consider the cost-effectiveness of

68 *A Sud et al. v. Italy* (2021), Civil Court of Rome.

69 *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Milieudefensie et al. v. Royal Dutch Shell PLC* (2021); *Urgenda Foundation v. The State of the Netherlands* (2019).

70 Hari M. Osofsky, *Is Climate Change ‘International’ Litigation’s Diagonal Regulatory Role*, 49(3) *Virginia Journal of International Law* 589 (2008).

71 Christian Huggel, Mark Carey & Adam et al., *Anthropogenic Climate Change and Glacier Lake Outburst Flood Risk: Local and Global Drivers and Responsibilities for the Case of Lake Palcacocha, Peru*, 20(8) *Natural Hazards and Earth System Sciences* 2176 (2020).

72 Friederike E.L. Otto, Petra Minnerop & Emma Raju et al., *Causality and the Fate of Climate Litigation: The Role of the Social Superstructure Narrative*, 13(5) *Global Policy* 738 (2022).

national climate governance efforts. If the evaluation of the judicial organ is contrary to the decision of the administrative organ, it will reduce the public's trust in the risk decision maker. At this time, it should consider whether this issue should be decided by the administrative organ first. According to the logic of litigation, the court should be based on the value of risk communication when reviewing whether the administrative action causes the risk of climate change.

C. Procedure Design of Administrative Public Interest Litigation

The first is to realize the typification of the pre-litigation procedure of administrative public interest litigation. Under the framework of China's administrative public interest litigation system, the pre-litigation procedure has achieved good practical results by means of procuratorial suggestions. Since 2018, 98.9% of procuratorial recommendations have been effectively approved before litigation.⁷³ In the field of climate change, the pre-litigation procedures should be conducted in stages. During the standard stage, an 'objection-based' suggestion can be made, where the procuratorial organ can raise objections if the administrative normative document underlying the relevant behavior contradicts the law. During the behavioral stage, a 'notification-based' suggestion can be made. For example, when a construction project is about to be implemented after obtaining permission, the procuratorial organ should provide relevant suggestions by examining the content and procedures of the permission, demonstrating the adverse effects of the behavior on the climate. During the execution stage, a 'suspension-based' suggestion can be made, requesting the administrative agency to temporarily suspend measures. During the relief stage, a 'correction-based' suggestion is adopted, requiring the administrative agency to take action or refrain from taking action to prevent the further expansion of damages.

The second is to clarify the forms of judgments for administrative public interest litigation. The Supreme People's Court and the Supreme People's Procuratorate jointly issued the *Interpretation on Several Issues Concerning the Application of Laws in Prosecutorial Public Interest Litigation Cases*, specifying several forms of judgments: finding a violation, declaring nullity, remedial judgment, revocation judgment, re-do judgment, enforcement

73 THE SUPREME PEOPLE'S COURT AND THE SUPREME PEOPLE'S PROCURATORATE JOINTLY ISSUE TYPICAL CASES OF PROCURATORIAL PUBLIC INTEREST LITIGATION FOR ECOLOGICAL AND ENVIRONMENTAL PROTECTION AND PROMOTE THE HIGH-QUALITY AND EFFECTIVE DEVELOPMENT OF JUDICIAL PROTECTION FOR THE ECOLOGICAL ENVIRONMENT, at https://www.spp.gov.cn/xwfbh/wsfbt/202308/t20230815_624952.shtml#1 (Last visited on July 21, 2025).

judgment, modification judgment, and dismissal judgment.⁷⁴ However, the judicial practice mainly adopts three forms of confirming illegal, performing duties, and taking remedial measures. Administrative public interest litigation in the field of climate should not be limited to this, but should flexibly choose to use different judgment methods according to specific circumstances. On the one hand, efforts should be made to enrich the methods of litigation and judgment to enhance the review intensity of administrative acts and prevent trials from being merely formalistic; on the other hand, it is essential to clarify the content of the judgment for the performance of duties, including the definition of the time limit, specific matters, effects and feedback of the administrative organs to perform. If there are no legal provisions, it is necessary to deeply understand the scientific nature of the idea of ecological civilization thought, and rationally refer to the scientific temperature control quantification objectives established by international conventions.

VI. CONCLUSION

Although the quantitative target clause of the *Paris Agreement* defines the object of CCL and establishes the causality of climate change, it cannot solve the problem of climate change at the root by focusing only on the responsibility of private entities for greenhouse gas emissions. From the development of global CCL, administrative public interest litigation has become the main way to focus on the GHG emission reduction obligations of the government and relevant departments. The relevant concepts and characteristics of administrative public interest litigation have been gradually clarified in judicial practice, playing an important role in promoting the implementation of the GHG emission reduction targets by the government.

Compared with litigation against individual carbon-emitting entities, administrative public interest litigation can promote the government's decision-making process to better implement the 'dual carbon' goals. However, as some scholars have argued, litigation is unlikely to be the best way to take effective action on climate change.⁷⁵ At present, in the face of the arrangement of China's 'dual carbon' legal system and governance tools, taking administrative public interest litigation as one of the important governance tools for the 'dual carbon' goals is a feasible path. At present,

74 Article 25 of the *Interpretation on Several Issues Concerning the Application of Laws in Prosecutorial Public Interest Litigation Cases of China*.

75 Jacqueline Peel, *The Role of Climate Change Litigation in Australia's Response to Global Warming*, 24(2) *Environmental and Planning Law Journal* 103 (2007).

China's legislation and practice on administrative public interest litigation show that it can play an effective role in addressing climate change, even though it will face certain legal challenges in the field of climate change. The key point is to clarify the relationship between the administrative power and the judicial power, to avoid the judicial initiative characteristic of the administrative public interest litigation being excessively involved in the exercise of the administrative power. At the same time, the choice of administrative public interest litigation does not exclude the responsibility of supervising individual carbon emission subjects, and it should be a backstop relief method after the government and relevant departments carry out supervision. In the future, it is necessary to expand the prosecution conditions and litigation procedures of administrative public interest litigation through legislation, to better support the 'dual carbon' goals.

(Edited by Li Jiesi)

中国“双碳”目标下气候变化行政公益诉讼的机遇与挑战

内容提要 面对气候变化的全球挑战,不少国家已出现以减缓和适应为主要目标的诉讼。以国家应对气候变化义务为理论逻辑的行政公益诉讼成为气候变化诉讼的主要实现路径。自“双碳”目标提出以来,中国出台多项立法与政策措施,推动多元治理工具协同运作,以实现国家气候治理目标。司法机制作为国家治理体系的重要组成部分,在其中的规制功能愈发凸显。我国既有的检察行政公益诉讼制度,从法律体系到司法实践,均为行政公益诉讼在气候治理领域发挥作用提供了可行性支撑。为进一步发挥该制度在气候治理中的作用,有必要厘清行政权与司法权的关系,将过程监督作为制度实施的重点,并补充针对碳排放主体的民事公益诉讼。具体而言,应从诉讼对象、因果关系和审查标准等方面拓展诉讼制度,同时不断完善诉前程序和判决形式,从而更好地助力“双碳”目标实现。
