

提升环境司法能力，推进环境司法审判

Improving the Environmental Justice Ability, Promoting of Environmental Judicial Adjudication

中欧环境治理贵州项目与生态保护法庭

EGP-Guizhou & Ecological Protection Court



2012年，中欧环境治理项目—贵州项目启动，作为全国第一家环保法庭，我们有幸参加了这个项目的一些工作。而通过参与这个项目，法庭整个工作发生了一些新的变化。

EGP-Guizhou project was initiated in 2012. As the first environmental court in China, we are honored to join in the project and undertook some works. By participating in the project, we learned a lot and new changes had taken place in the Court.



一、法官办案能力的提升

Promotion of the Judges ' Judicial Ability

中欧环境治理贵州项目的一个重要目标就是加强环境司法能力的建设，为此，项目组邀请了各方面的专家对环保法庭法官进行了专业培训。一方面，我自己作为专家对其他相关人员进行培训，另一方面，我们法庭也派出法官参加了相关的培训。在这些培训中，以环境污染基本知识、环境损害评估方法、环境污染纠纷的处理等培训对法官最为实用。也正是通过这些培训，法庭法官的专业知识、处理案件能力得到提高。

One important objective of EGP-Guizhou Project is to strengthen the capacity building of environmental Justice. So the project invited professionals in different fields to give training to the judges from the environmental courts. On the one hand, I myself was invited as an external expert for some trainings; on the other hand, our court also sent out judges to get trained. Among the trainings, the most useful ones are Environmental Basic Knowledge, Environmental Damage Assessment (EDA) Methods, Disposal of Environmental Pollution Disputes. And by the trainings, both the judges' expertise and the capacity of handling cases are improved.



二、环境污染损害评估机构的建立

Establishment of EDA Organizations

—环境司法可持续发展的保证

The promise to a sustainable development of environmental justice

- 环境司法离不开环境污染损害评估，尤其是在环境公益诉讼中，我们国家尚未建立对自然资源、公共环境的评估标准、评估方法、评估体系。在贵州，更无相关机构能够从事此类工作。因此，在过去的案件中，我们对环境损害评估多采取调解或其他解决。
- EDA is critical to Environmental justice, especially in the environmental public interests litigations. Now in China, there are no EDA standards, methodologies and system regarding natural resources and public environment. Therefore, in past, we had to adopt mediation or other alternatives to handle the cases.
- 中欧环境治理—贵州项目围绕贵州环境治理所开展的工作，尤其是提出的环境公共政策建议、邀请环保部规划设计院相关专家对贵州技术人员的培训，直接推动了贵州环境损害评估机构的建立。
- EGP-Guizhou Project is working on the environmental governance in Guizhou province. Particularly, the public policy recommendation on environment proposed by the project and the trainings given by the Center for Environmental Risk and Damage Assessment of CAEP to the technical staffs in Guizhou promoted the building of EDA organizations in Guizhou directly.



- 2014年，贵州省环保庭已明确由贵州省环科院筹建环境污染损害评估中心。
- In 2014, Guizhou Environmental Court confirmed Guizhou Academy of Environmental Sciences to set up the EDA Center.
- 今年2月，法庭受理了一件由自然之友、清镇市生态保护联合会为原告提起的大气污染的环境公益诉讼，原告诉讼请求中的一项为要求被告赔偿对环境造成的损害。我们已与省环科院联系，请他们对该案损害进行评估。
- In Feb. of 2015, the environmental court accepted one environmental public interests litigation case, in which Friends of Nature and Qingzhen Federation of Ecological Protection acted together as the plaintiff. One of the plaintiff's claim is compensation on the environmental damage of air pollution caused by the defendants.
- 我们也向贵阳市生态委提出建议，请生态委牵头组建贵阳市环境污染损害评估机构。We also proposed to the Guiyang Ecological Committee and ask them lead to build the EDA center of Guiyang City.
- 环境污染损害评估机构的建立，将对环境司法提供有力帮助。
- The building of EDA Center will be benefit to the environmental justice.



三、借鉴国外经验，推进贵州环境司法

Learn from the EU experiences and improve the access to environmental justice

- 1、瑞典环保法庭的“技术法官” Technical Judge of the Swedish Environmental Courts
- 项目实施过程中，组织相关人员到瑞典进行考察，瑞典环保法庭的“技术法官”值得我们借鉴。在我们国家现有模式下，有人民陪审员制度，环保法庭根据环保审判的特点，又聘请了部分专家作为专家陪审员参与环保审判。专业问题交给专家解决，这符合环保审判规律。但在我们这种模式下，专家陪审员只能与法官组成合议庭对案件进行审理，而不能单独审理案件。能否在这方面实现突破？由专家独立对案件进行处理，然后由主审法官签发生效？
- During the project implementation period, related stakeholders were organized to visit Sweden and it showed that the technical judge system is worth learning. Under the present mode, there are system of people's assessors. For the environmental courts, external experts can be invited to participate as professional assessors in the trial based on the characteristics of the cases. So the professional issues are handled by the experts, which is in accordance with the environmental trial rules. However, under the existing mode, the professional assessors must work together with judges under the collegiate bench to handle the cases, and can not work independently. So if we can break through and make the experts handle the cases independently and presiding judges issue the results afterwards.



- 2、瑞典环境法庭受理的案件 Cases accepted by the Swedish environmental courts
- 瑞典环境法庭受理的案件基本是环境许可，而在我们国家是向环保部门申请，差别很大。由于基本制度设计的不一致，我们不可能像瑞典那样去发放环境许可，但瑞典模式对我们仍有积极意义：环境许可经过公众及环保部门的监督，最后通过司法审查后发放的，当事人必须遵守相关要求，不得违背或随意调整、修改。
- Environmental permit is the basic cases accepted by the environmental court in Sweden, however, in China, the permit is applied to the environmental protection departments. Because of the difference designs of the basic system, we can not issue the environmental permits like Sweden. But the mode in Sweden has a positive meaning to us: environmental permit should be supervised by the publics and environmental protection departments, and be issued after the judicial review. So the party must obey the related requirements and can not violate, adjust or change the permit freely.
- 在我们国家现有模式下，环境许可由环保部门审查发放，当事人不遵守或随意调整的情况比比皆是。在一些涉及环境保护的规划、公共政策的出台等方面，因领导人变更而随意调整的情况也普遍存在。
- Under the existing mode in China, the environmental permit is issued by the environmental protection departments. There is lots of cases in which the party freely violate or change the regulations of the permit. For the introductions of Environmental Protection Planning s and Public Policies, it is also common to adjust with the change of the leaders.



贵州省环境保护国际合作中心
Guizhou International Cooperation Centre
for Environmental Protection



- ①如果能够借鉴瑞典环境法庭做法，把环境许可、规划许可及调整纳入司法审查的范围，以司法裁定确认规划的合法性，明确调整规划需经司法审查程序，是否可以一定程度改变这种违反调整规划的随意性？
- If we learn from the experience of Swedish Environmental courts, for example, bring the Environmental Permit, Planning Permit and Adjustment into the scope of judicial review. So the legality of the Planning is confirmed by the judicial judgment, as well as the adjustment of the Planning. Based on above, is the situation of arbitrariness of change the planning improved, to some degree?
- ②关于环境公益诉讼，国内更多的是对主体进行研究。实际上，环境公益诉讼的范围也很值得研究。对环境保护而言，预防原则非常重要，而有效预防，就要从源头抓起。因此，规划、决策的可诉性值得研究。在2014年贵阳中院出台的《推进环境公益诉讼意见》中，已把“涉及生态文明重大功能规划”纳入环境公益诉讼范围。
- For the environmental public interests litigation, the main studies are focus on the subject. In fact, the scope of the environmental public interests litigation is also worthy to study. As far as the environmental protection is concerned, the precautionary principle is very important. And in order to prevent effectively, control the pollution source is necessary. Therefore, the justifiability of the planning and decisions are worthy to work on. The “Opinions on promotion the environmental public interest litigation” which issued by Guiyang Intermediate Court brings the “Concerning Major Function Planning to Ecological Civilization” into the scope of environmental public interests litigation.



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- 3、立法精神和审判理念的影响
- Impact on legislative spirit and concept of adjudication
- 在欧盟项目的培训中，听到一个案例介绍，一个非洲国家的环境案件，用了奥胡斯公约的理念作出判决。
- During the project training, a environmental case happened in a African country was introduced. And the judgment was made based on the concept of Aarhus Convention.
- 启发：各国法律制度和法律规定不一样，我们不能直接引用国外法律或国际法。但在环境法上，很多立法理念、立法宗旨是可以借鉴的。我们的环境案件判决完全可以借鉴国外先进的理念。我期待我们自己的判决能够在这方面有突破。
- Enlightenment: Different countries has different legal system and different legal provisions, so we can not introduce the foreign laws or international laws directly. However, for the environmental laws, there are lots of legislation concepts and purposes of legislation which we can learn from. Our judgments to the environmental cases can learn from the foreign advanced experiences totally. I hope we can break through in the aspect of our own judgments.



四、公众维权意识的提高

Improve the public's awareness of environmental rights

- 2010-2015生态保护法庭受理环境民事案件数量情况
- 2010-2015 Civil cases on environmental damages handled by ecological protection court

■ 时间	民事	公益诉讼
■ Time	Civil cases	Public interest litigation
■ 2010	4	1
■ 2011	4	1
■ 2012	5	5
■ 2013	4	3
■ 2014	17	5
■ 2015	3	1



五、引入第三方监督，多元解决环境纠纷

The third-party supervision is introduced to solve the environmental disputes diversely

- 在生态法庭原来受理的案件中，我们引入环保组织对排污企业进行监督，把公众参与与环境司法有机地结合，取得了很好的法律效果和社会效果。
- During the handling of the cases accepted before by the environmental court , we introduced the supervision to the polluters by the environmental organizations. So the public participation and environmental justice are combined together, which produce good legal effect and social effect.
- 2013年，针对广铝存在的问题，我们会同省、市、清镇三级环保部门对广铝进行约谈，并在中欧环境治理贵州项目会议上与中华环保联合会、贵阳公众环境教育中心进行沟通商量解决方案，最终促使广铝接受贵阳公众环境教育中心的第三方监督，既有效预防污染事件的发生，又化解了社会矛盾，创立了“清镇模式”。
- In 2013, for the problems existing in Guizhou Aluminium Group Co., Ltd, Environmental court together with the three levels environmental protection departments which are provincial, municipal and Qingzhen levels had a meeting with the company. And a discussion for the solutions was held on during one conference of EGP-Guizhou project, with ACEF and GPEEC. Finally, Guizhou Aluminium Group Co., Ltd accepted the solution of supervision by the Third Party-GPEEC, which can prevent the happening of pollution effectively on one hand, and on the other hand, the social contradictions are solved. This created a Qingzhen Mode.



六、发挥环境司法的导向作用

Environmental justice should play the role of guidance

- 在对瑞典的考察中，我们了解到，瑞典是通过焚烧发电的方式处理垃圾，由于垃圾不足，还要从其他国家进口。而我们国家一旦决定建垃圾焚烧发电厂，周边居民就会反对。司法能否通过判例发挥一些引领作用？比如，通过受理一个公益诉讼，邀请支持意见和反对意见的环保专家在法庭上辩论？邀请公众旁听审理过程，甚至考虑直播庭审过程？这样，让公众对整个项目有一个全面了解，以做好决策。
- During the our visit in Sweden, we learned that, the typical treatment method of solid waste in Sweden is incineration for power generation. And even need to import waste because the amount is insufficient. However, in China if we decide to build the waste incineration power plants, the residents around will object to the decisions. So can the judicature play its leading role by using case law? For example, when a public interests litigation is accepted, can we invite the experts both with supportive opinions and with objective opinions coming to the court and debate? At the same time, the publics audit the trial. Even, keep the trial in live telecast. By doing these, the publics can know the whole trial and make a good decision.



Thank You !

