



中欧环境治理项目法官环境法培训系列教材

总主编 李永宁 金道格 (Douglas Whitehead)

环境法适用的理论、 实践与欧盟经验

Application of Environmental Law—Theory,
Practice and EU Experience

李集合 李军波 主编

人民法院出版社

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序 言

(一)

《环境法适用的理论、实践与欧盟经验》是“中欧环境治理项目陕西、甘肃、广西法官环境法培训系列教材”之一。“中欧环境治理项目”是欧盟委员会与中国政府环境公共治理领域进行合作的一揽子项目，“陕西、甘肃、广西法官环境法培训”是中欧环境治理项目中三个环境司法项目的其中一项，项目旨在通过对陕西、甘肃、广西各级法院法官进行环境法理论、环境司法实务以及中外环境法治实践经验等方面的系统培训，提高法官办理环境案件的水平，并藉此提升三地法院应对环境纠纷的能力。项目执行单位为德国国际合作机构（GIZ）和西北政法大学环境法研究所。项目自2014年1月19日正式启动，至2015年6月实施完毕，历时约17个月，在陕西、甘肃、广西共举办8次培训班，累计培训三省各级法院业务骨干300余人，取得了很大的成功。

项目的成功，仰赖于中外双方一大批卓越的环境法专家的共同努力，其中爱尔兰的 Yvonne Scannell 教授和中方的王树义教授、秦鹏教授为项目的外包兼授课专家；黄河教授、王瀚教授为项目顾问；Johannes Schlichte 先

生、李永宁教授为项目总负责人；李集合教授、孙江教授为项目高级专家；Douglas Whitehead 先生和李军波博士具体负责了项目的组织实施工作。项目还特邀最高人民法院研究室孙佑海副主任、中国应用法学研究所环境司法研究中心韩德强主任、环保部法规处李静云副处长、《法律科学》主编韩松教授、《甘肃政法学院学报》主编史玉成教授、西安建筑科技大学环境法学科负责人刘莉教授、广西壮族自治区环保厅李一平副巡视员、西安市环保局张炳淳副局长、陕西省环保厅固体废物管理中心宋东刚主任、甘肃政法学院民商经济法学院郭武副院长等为特邀授课专家。西北政法大学的王继恒副教授、郝少英副教授、丁岩林副教授、王兆平博士、李雅萍博士、黄政博士、李亚菲博士和西安财经学院的王波副教授作为项目组专家全程参与了项目的所有活动。所有这些专家的共同参与，确保项目取得了圆满的成功。

(二)

《环境法适用的理论、实践与欧盟经验》作为本项目的基础性教材，最先由李永宁、Douglas Whitehead、李集合、李军波拟定出编写大纲，在项目组讨论的基础上，分别赴陕西、广西、甘肃三省高级人民法院召开座谈会，广泛听取法官意见，由各部分撰稿人撰写初稿，再经过多次培训使用，主编和撰稿人反复修改、不断完善，历时 17 个月，最终定型出版。特别要说明的是陕西省高级人民法院政治部谭晓峰主任、广西壮族自治区高级人民法院政治部杜恒年主任和甘肃省高级人民法院审委会贾

靖平专委，他（她）们不仅直接组织和参与了讨论大纲的座谈会，而且对本书的结构和内容提出了许多宝贵的意见和建议；爱尔兰的 Yvonne Scannell 教授给本书的第七、八两章提供了大量一手资料和许多修改意见。与法官面对面的交流以及中外专家的广泛参与，保证了本书不仅是集体智慧的成果，而且也确保了本书在体例和内容上都具有鲜明的新颖性和创造性。

本书以满足环境司法实务需求为根本导向，介绍环境法既有理论时力求体系性与简洁性，在关注我国环境司法法理与法治现状的同时，择取并推介欧盟相应及可取的有益经验。全书在体例结构的设置上力求实用性与法理性兼容，具体内容可分为两大块：第一块为我国既有的环境司法理论、法制体系与已有经验，涉及第一部分至第六部分。第一部分重点介绍了国内环境法学界相对比较成熟的环境法相关理论及新环保法的特色与值得关注的修改之处；第二部分专门阐释了环境司法思维的基本法理及其在违法性、因果关系、过错及行为、事实等领域内的运用技巧，结合比较法上的经典案例进行说理是该部分的特色；第三部分专题阐述环境纠纷诉讼与非诉讼处理机制在当下的法制现状、制度缺陷与改进空间；第四、五部分分别以环境污染诉讼与自然资源纠纷的处理为主题，在揭示既有规范体系与纠纷焦点的基础之上，将司法实务中的难点与重点类型化，针对各类纠纷提出具体指导建议；第六部分重点关注了我国环境司法专门化的现状与可预见的趋势，并针对下一步需着力改革的领域提出制度建议。

第二块则是对欧盟已有的环境法制及其适用方面的有益经验进行择取与推介,涵盖第七、八两部分,具体内容包括:欧盟环境法律体系、欧盟环境立法的目标原则及其运用案例、欧盟12项重点环境法律制度的基本规范内容及其经典司法案例。

(三)

本书各部分的撰稿人除西安财经学院的副教授王波博士外,其余均为西北政法大学环境法研究所的中青年优秀学者,他(她)们的研究领域涵盖环境法哲学、环境法基础理论、污染防治法、资源权属法、生态补偿法、环境责任、环境经济学等学科。具体分工如下:第一部分由李集合教授、李军波博士负责撰写;第二部分由丁岩林副教授、博士负责撰写;第三部分由李亚萍博士负责撰写;第四部分由黄政老师负责撰写;第五部分由李集合教授、郝少英副教授负责撰写;第六部分由王继恒副教授、博士负责撰写;第七部分由王波副教授、李亚菲博士负责撰写;第八部分由王兆平博士、王莹莹副教授负责撰写。全书由李集合教授、李军波博士统稿;李永宁教授、Douglas Whitehead先生对书稿进行了修改、审定。

限于能力,书中错误在所难免,望各位读者予以批评指正。

中欧环境治理项目陕西、甘肃、广西法官环境法培训系列教材总主编

李永宁 Douglas Whitehead(金道格)

Preface

I

The volume “Application of Environmental Law—Theory, Practice and EU Experience” is one of the key training materials developed under the project “Development of Training Curricula and Organization of Training Courses for Judges in Environmental Law in Shaanxi, Guangxi and Gansu”, a local partnership project of the EU – China Environmental Governance Programme. The EU – China Governance Programme is a framework programme implemented jointly by the government of the People’s Republic of China and the European Commission in the area of environmental public governance, and the project “Development of Training Curricula and Organization of Training Courses for Judges in Environmental Law in Shaanxi, Guangxi and Gansu” is one of three local partnership projects under the EGP’s third core theme “access to environmental justice”. The project aimed at improving both individual capacities of local judges as well as the institutional capacities of the courts in the three provinces in environmental adjudication through the development and application of a systematic curriculum and training programme analyzing Chinese and international (especially EU) experiences in environmental law. Implemented by the Institute for Environmental Law at the Northwest University of Politics and Law in Xi’an, China, and the Chino – German Legal Programme

of the German federal development agency GIZ, the project was launched on January 19, 2014 and completed on June 30, 2015. Eight straining were conducted over this 17 month – period with approximately 300 judges receiving training in environmental law.

The success of the project and curriculum rested on the extensive contributions of a number of experts in environmental law from both China and the EU. This includes outsourcing specialists such as Prof. Yvonne Scannell of Trinity College Dublin, Prof. Wang Shuyi of Wuhan University and Prof. Qin Peng of Chongqing University; consultants such as Prof. Huang He (NWUPL/Shaanxi High Court), and Prof. Wang Han (NWUPL); project directors Dr. Johannes Schlichte (GIZ) and Prof. Li Yongning (NWUPL); senior project experts such as Prof. Li Jihe and Prof. Sun Jiang and project manager and organizer such as Douglas Whitehead (GIZ) and Dr. Li Junbo (NWUPL). Other Guest lecture experts to the project included Mr. Sun Youhai, former vice director of the China Institute of Applied Jurisprudence; Dr. Han Deqiang, Director of the Research Center for Environmental Law at the China Institute for Applied Jurisprudence; Ms. Li Jingyun, Director of the Department of Policies, Laws and Regulations under China's Ministry of Environmental Protection; Prof. Han Song, chief editor of Legal Science; Prof. Shi Yucheng, chief editor of the Journal of the Gansu Institute of Politics and Law; Prof. Liu Li, environmental law professor in charge at the Xi'an University for Architecture and Technology; Ms. Li Yiping, Deputy Inspector at the Guangxi Department of Environmental Protection; Mr. Zhang Bingchun, Deputy Director of the Xi'an Environmental Protection Bureau; Mr. Song Donggang, director of the solid waste management center of Department of Shaanxi environmental protection, and Prof. Guo Wu, vice dean of the School of Civil

and Economic Law at the Gansu Institute of Politics and Law. In addition, extensive contributions were also made by academic staff at the Institute of Environmental Law at Northwest University of Politics and Law, including associate professor Dr. Wang Jiheng, associate professor Dr. Hao Shaoying, associate professor Dr. Ding Yanlin, Dr. Wang Zhaoping, Dr. Huang Zheng, Dr. Li Yaping, and Dr. Li Yafei as well as Dr. Wang Bo, associate professor at Xi'an University of Finance and Economics. All of them took fully part in the whole process of the project, ensuring the success of the project.

II

This volume serves as the core curriculum of the project, and is grounded on a framework originally developed by Prof. Li Yongning, Douglas Whitehead, Prof. Li Jihe and Dr. Li Junbo. On this basis, and following consultations with the courts and direct feedback from judges in the provinces of Shaanxi, Guangxi and Gansu, the content of the volume was developed by the project team through a series of revisions over the 17 month project implementation period. Particular thanks are due to Mr. Tan Xiaofeng, Director of the Policy Department at the Shaanxi People's High Court; Mr. Du Hengnian, Director of the Policy Department at the Guangxi People's High Court, and Ms. Jia Jingping, chief judge of the third civil chamber and member of the special legal committee at the Gansu People's High Court, for their helpful guidance and suggestions for the volume. We would also like to express our sincere thanks to Prof. Yvonne Scannell of Trinity College Dublin for her support and advice on the 7th and 8th chapters of the volume. The contributions from both judges as well as Chinese and international experts were vital in ensuring the volume's novel and inno-

vative both in structure and content.

This curriculum aims to function as a guiding document that can address practical needs and concerns in the area of environmental justice. It provides a clear and systematic theoretical introduction to environmental law in China, at the same time offering an analysis of EU experiences that can provide useful reference for the growth and development of China's environmental rule of law system. The volume seeks a complementary balance between theoretical robustness and practical application, and is thus divided into two main sections. The first is the theory, legal system and experiences surrounding environmental justice in China, covering chapters 1 – 6. Chapter 1 provides an overview of China's environmental law system and notable recent revisions. Chapter 2 provides clarification and enumeration on special issues in theory and practice in environmental justice, including criminality, causation, fault and non – fault liability, typical of analyzing with cases, among other issues. Chapter 3 examines the legal system for various litigation – based as well as alternative dispute resolution (ADR) mechanisms for environmental disputes within the context of the present legal system, accounting for both gaps and reforms within the system. Chapters 4 and 5 introduce litigation – based approaches dispute resolution for environmental pollution and natural resource disputes respectively, on the basis of both standard system and the dispute focus, providing an analysis and typologies for the different types of disputes and offering concrete recommendations for how to handle each type of dispute. Finally, Chapter 6 provides an overview of the current situation as well as potential trends in the specialization of environmental justice in China, providing further recommendations for reform in capacity building and pedagogy in environmental justice.

The second part, covering chapters 7 and 8, analyses the environmental legal system of the European Union as well as experiences and good practices in its application. This includes an overview of the system of environmental laws in the EU, principles and objectives in EU environmental legislation, relevant case studies, as well as core content and relevant reference cases within the framework of 12 major environment – related EU legal frameworks.

III

With the exception of Dr. Wang Bo, associate professor of Xi' an University of Finance and Economics, the authors of the volume are all young scholars from the Institute of Environmental Law at the Northwest University of Politics and Law, whose main areas of research center on the philosophy environmental law, environmental law theory, pollution control and prevention law, natural resource rights law, Eco – compensation law, environmental liability and environmental economics. The authorship of the chapters is as follows:

Chapter 1: Prof. Li Jihe, Dr. Li Junbo

Chapter 2: associate professor Dr. Ding Yanlin

Chapter 3: Dr. Li Yaping

Chapter 4: Dr. Huang Zheng

Chapter 5: Prof. Li Jihe, associate professor Hao Shaoying

Chapter 6: associate professor Dr. Wang Jiheng

Chapter 7: associate professor Wang-Bo, Dr. Li Yafei

Chapter 8: Dr. Wang Zhaoping, associate professor Wang Yingy-

ing

The volume was coordinated and collated by Prof. Li Jihe and Dr. LI Junbo, and revised and edited by Prof. Li Yongning and Douglas

Whitehead.

Any errors in the volume are our own. Commentary and feedback are welcome.

*Chief Editors, Curricula Series,
Development of Training Curricula and Organization of Training Courses
for Judges in Shaanxi, Guangxi and Gansu,
EU – China Environmental Governance Programme*

LI Yongning

Douglas Whitehead

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