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### Climate protection in the People's Republic of China

Bartosz RAKOCZY

*University of Nicholas Kopernika, Poland*

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## Climate Protection in The People's Republic of China

Bartosz Rakoczy<sup>1</sup>

### Abstract

Climate protection is one of the basic problems in the modern world. It is also a problem which should be solved in an all-world scale and not by each state separately. It does not mean, however, that individual states could not regulate issues concerning climate protection in their own legislation. Constitutional regulations play an important role in climate protection.

Climate protection in the constitution of the People's Republic Of China is carried out on several plains. First, climate is protected as an environmental element to the use of which all citizens have the right. Public authorities ensure climate protection. Second, climate protection occurs within the protection of rights and freedoms of an individual. An individual / citizen has the right to use environment, and also climate. Third, climate is protected as an element of environment on the basis of the regulations concerning environment as the good of the whole nation.

In the first place it should be noticed which duties public authorities have when it comes to climate protection. It is about presenting their duties concerning this notion. Climate is protected first due to the fact that it is an element of environment which public authorities should protect and, second, climate as an environmental element is the common good of a nation.

Later constitutional position of an individual concerning climate protection will be presented. In particular, the duty of an individual to protect climate will be characterized as well as the rights of an individual to use environment.

The summary will contain proposed solutions which could be accepted in the Constitution in the future in order to protect climate in a better way by the People's Republic Of China.

The environmental protection, in particular climate protection, is a challenge for the modern world. As W. Skrzydło points out "the environmental protection has been one of the principal issues of the modern society and state"<sup>2</sup>. In consequence, the modern legislator faces the challenge connected with legal regulations concerning the environmental protection. Among notions referring to the environmental protection one should also take into account intensity with which one should protect particular environmental components without forgetting about the fact that we should protect the environment (as a whole) despite everything.

At present the most important challenge connected with the environmental protection of the contemporary state is the climate protection. It is connected with the scale of climate violation as well as the scale of the results of such violations. The climate protection is a challenge not only for biologists, economists, ecologists but also for legislators. That protection should be carried out both on the level of international public law, regional law (eg. the European Union law) and the national law<sup>3</sup>.

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<sup>1</sup>Manager, Environmental Protection Law, Nicholas Copernicus University in Toruń – Poland, and Professor, department of the Public Economic Law and the Environmental Protection, Gdańsk University – Poland, email: bartosZRakoczy@wp.pl

<sup>2</sup>W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej*, ed. 5, Warszawa 2007, p. 81.

<sup>3</sup>see in: *The role of the laws in the protection of the climate, Climate Change, Global Risk, Challenges & Decisions*. Abstract books, Copenhagen 2009 IOP Conf. Series: Earth and Environmental Science 2009, z. 6, 112036.

From the point of view of national law one should recognize as the most important the regulations concerning the environmental protection including the climate protection in the constitutional regulations. The Constitution of the People's Republic of China has the highest authority in the legal system so it plays the role of the most important and superior legal act.<sup>4</sup> At the same time the People's Republic of China is considered as the state where dictatorship of the proletariat lies at the basis<sup>5</sup>.

The report covers discussing legal regulations concerning the climate protection in the Constitution of the People's Republic of China dated 4 December 1982<sup>6</sup>. The aforementioned report stresses above all tasks of the state, issued connected with international aspects of the climate protection as well as the legal situation of individuals concerning the climate and its protection.

The Constitution of the People's Republic of China, as well as other constitutions of the world, does not contain the definition of climate. Such an important act should not contain definitions since it is the act of a general and abstract character. Moreover one should notice that generally in legal sciences it is difficult to define such a not legal notion as climate. It may be assumed that in legal sciences "the notion of climate has not been precisely defined in accordance with legal regulations. [...] The climate is defined as the characteristic system of phenomena and atmospheric processes occurring on a particular area which develops under the influence of physical and geographical properties of that area. The climate is also defined as an average state of weather on a given area, characterized on the basis of measurements carried out in the period of at least 30 years since measurement of climate components is necessary<sup>7</sup>.

The analysis of the regulation concerning the climate protection in the Constitution of the People's Republic of China one should start from the preamble. J. Rowiński and W. Jakubiec claim that "the bases of the constitutional system of the state [i.e. China – author's note] are regulated by the preamble and regulations contained in the first chapter."<sup>8</sup> The preamble to the Constitution of China contains a sentence saying "The future of China is closely linked to the future of the World"

That sentence from the last part of preamble has a very important meaning since it expresses the connection between the world's history and its future. It means that the People's Republic of China undertakes international cooperation also regarding the climate protection for that is one of the most important challenges for the modern world.

International cooperation, as it arises from the preamble, is to be connected with the future of the world. It means that the People's Republic of China not only undertakes such a cooperation but also does that by taking the world's future into account. It seems that the climate protection is the best example of the kind of actions taken into considerations. Not only does it require international cooperation but also it is future-oriented because global actions undertaken today are going to produce effects only in the future. Climate is protected not only for contemporary generations but first of all for the future ones.

Notions connected with the environmental protection including the climate protection appear also in the next parts of the Constitution of China. Art. 9 may be treated as the constitutional basis of the climate protection „All mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches, and other natural resources are owned by

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<sup>4</sup> Wang Gninguo, John Mo, Chinese Law, London Boston 1999, p. 26

<sup>5</sup> W. M. Bezczastryj i inni, Konstytucyjne prawo innych państw, Kiev 2008, p. 426.

<sup>6</sup> Further referred as the Constitution of China

<sup>7</sup> M. Kistowski, [in:] J. Ciechanowicz – McLean (ed.), M. Kistowski, B. Rakoczy, D. Trzcńska, K. Klenowska, Leksykon ochrony środowiska, Warszawa 2009, p. 92.

<sup>8</sup> J. Rowiński, W. Jakóbiec, System konstytucyjny Chińskiej Republiki Ludowej, Warszawa 2006, p. 37.

the state, that is by the whole people, with the exception of the forest, mountains, grassland, unreclaimed land and beaches that are owned by collective in accordance with the law.

The state ensures the rational use of natural resources and protects rare animal and plants. Appropriation or damaging of natural resources by any organization or individual by whatever means is prohibited”.

The aforementioned regulation is contained in the first chapter of the Constitution of the People’s Republic of China called „General Principles”. That chapter covers the basic constitutional and political principles of the People’s Republic of China. Within the general principles the constitutional legislator shall regulate the basic values that the constitution should protect.

Natural resources should be treated as such without any doubt but their protection is connected first of all with the role that the aforementioned resources play in the functioning of the state and society. They are to serve the common good and all the people what arises from the art 9 of the Constitution of the People’s Republic of China. „The state is responsible for assuring the national use of these natural resources and for protecting the same resources against exploitation”<sup>9</sup>

From the analyzed point of view, important is the fact that the components enumerated in the art. 9 of the Constitution of the People’s Republic of China make up the notion of the environment. They are also the environmental components. Their rational acquiring, use and management is supposed to aim at the environmental protection. It is worthy noticing that the art. 9 of the Constitution of the People’s Republic of China mentions plants as environmental components deserving protection. Flora protection, regardless of the fact if the plants are rare, protected or common has the great significance in the climate protection. The state of flora serves the stability of climate and in consequence leads to its protection.

The art. 20 of the Constitution of China that states „The state promotes the development of the natural and social sciences, disseminates knowledge of science and technology, and commends and rewards achievements In scientific research as well as technological innovation and invention” is also counted among the constitutional bases of the climate protection.

The aforementioned regulation has a general meaning and refers not only to issues concerning the environmental protection. Yet this article may also be used for issues connected with the environment and its protection since it imposes the duty on the state to promote and develop natural and social sciences, deepening knowledge and supporting the development of technical and technological innovations.

It is interesting that the Constitution of the People’s Republic of China imposes the duty to promote and develop natural and social sciences. The development of these sciences is naturally connected with aiming at obtaining funds necessary for the environmental protection including the climate protection. In case of the environmental protection, including the climate protection, one can clearly notice how nature and social sciences may serve a common goal since the climate protection is not possible without involving both natural and social sciences. Natural sciences allow to understand the mechanisms that rule the nature and climate. They also allow to gain proper means for the climate protection<sup>10</sup>.

Social sciences also play an important role in the climate protection. Economics is important as well for it allows to figure out the costs of climatic changes as well as the law which allows to assure the best efficient means and instruments for the climate protection

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<sup>9</sup> Wang Chenguang, Zhang Xianchu, Introduction to Chinese law, Hong Kong Singapore 1997, p. 456.

<sup>10</sup> The greenhouse effect which is the reason of climate disturbance is drawn up first of all by physicists and chemists and not by sociologists or lawyers since they are capable of working out effective means of the climate protection.

including sanctions and sociology describing social consequences of climatic changes and allowing to forecast future effects.

The national authorities have the duty to support and develop new techniques and technologies. Such a situation is in favour of gaining new ways of development and as a consequence the climate protection because such technical and technological solutions taking the need to protect the climate into account may be consciously suggested.

Another provision of the Constitution of the People's Republic of China that is connected with the climate protection is the art. 26 which stipulates that. The state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The state organizes and encourages afforestation and the protection of forests.

The aforementioned provision should be treated as the basic one when it comes to the climate protection. Similarly as in the case of former provisions the legislator does not clearly point out that they mean only climate. The legislator refers to the notion of the environment and not the climate.

Yet it stems from that provision that it says also about the climate which is an important environmental component. The contents of that provision is wide.

The aforementioned provision imposes on the state the obligation to protect the environment, including the climate. That duty should be understood widely. It can be assumed that the state is obliged to undertake all the actions aiming at preserving and improving the state of the environment. The duties connected with the environmental protection may be realized on four planes – constituting laws, organizing activities connected with the environmental protection, assuring funds and carrying out ecological education. The constitutional obligation of the state concerning the environmental protection is set out on these four planes.

When it comes to the first of the aforementioned planes it should be pointed out that the state has duties concerning constituting the law favourable to the environment what can be done both directly and indirectly. Direct method consists in constituting legal acts aiming directly at the environmental protection, while indirect method consists in constituting other standards (eg. tax standards) that are to aim at different purposes but at the same time it is possible to reach a fiscal goal<sup>11</sup>.

The state also has the duty to organize the environmental protection. It occurs first by indicating which organs are competent for the issues concerning the environmental protection and what are their competences. The state may constitute specialized bodies, entrust already working bodies with performing the tasks or accept a mixed model consisting in part of the competences being performed by specialized bodies and another part by not specialized<sup>12</sup>.

The next task of the state is assuring financial means for the environmental protection. The state is obligated to finance the environmental protection either through the national budget or specialized funds. The lack of sufficient funds for the environmental protection is the basic reason of ineffectiveness of protective measures.

The last task should be ecological education on all the stages beginning from kindergartens to adult education. The state should assure proper educational content in school curricula, including studies.

The aforementioned solutions will also refer to issues concerning the climate protection.

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<sup>11</sup> Eg. through exemptions or tax reliefs

<sup>12</sup> See in: B. Rakoczy, *Prawo ochrony przyrody*, Warszawa 2009, p. 34.

First, the state should constitute the regulations that either directly or indirectly are favourable to the climate protection. Thereby it is forbidden to constitute regulations that may lead to violating the climate.

The state should also organize the climate protection by designating competent organs which might deal in climatic issues under their own tasks. Then the state could entrust these bodies with specific competences.

The state should also assure financial means for the environmental protection and directly bear the costs of the climate protection (financing technologies favourable to the climate protection).

The state's duty consists also in carrying out education concerning the climate protection both for children and adults. The education is first of all connected with making the society aware of the importance of the climate and indicating the need of its protection.

It results from the art. 26 of the Constitution of China that the state has an obligation to protect the environment, including the climate, on account of people. The Chinese legislator indicates clearly that it concerns the environment in which people live. One can clearly see the connection between the environmental protection and individual's legal situation, including the connection with its laws. The Chinese legislator also proves that the protection of human life and health is the basic motive of the environmental protection in the Chinese legislation. The following question occurs - can the right of humans to live in the favourable environment be deduced from the art. 26 of the Chinese Constitution?

In spite of the fact that the regulation refers to human life and health as the basic values, it is hard to deduce that every human being has the right to live in the favourable environment and the state is obliged to assure that.

First of all, the regulation is not to be found in the second chapter of the Constitution of China – the basic rights and duties of citizens, so the legislator's intention was not to refer to the rights and freedoms and even duties of citizens but only indicating one of the basic duties of the state.

Secondly, human life and the environment favourable to humans are only indicated as a standard in that regulation at achieving of which the state should aim, and not the value itself.

One should also make the demand *de lege ferenda* that such a right of an individual to live in the favourable environment should be expressed in the future.<sup>13</sup>

From the analyzed point of view one should also treat duties of the state concerning protecting the environment against pollutions as very important. It is a very important and at the same time a very courageous declaration of the state taking the form of an obligation. The danger of pollution is now treated as one of the most dangerous challenges for the environment in China.<sup>14</sup>

The state committed itself to preventing pollutions and the risk of such pollutions. It seems that the obligation refers to the very climate protection. Modern problems concerning the environmental pollution first of all refer to the air, and as a consequence to the climate. So the state is obliged to prevent air pollution, including the pollution which may result in climate violation. It does not only concern the fact that the state alone refrains itself from polluting the air but also leads to such a situation when other subjects also refrain themselves from such an activity.

The state has an obligation to prevent the risk of pollution as well which means referring to the universally accepted prevention principle in the modern environmental

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<sup>13</sup> The same problem refers also to many other constitutions, eg. The Constitution of the Republic of Poland dated 2 April 1997

<sup>14</sup> E. Chien, Working towards environmental quality in the 21st century, Pekin 1991, p. 19.

protection law. The mentioned principle first of all assumes refraining from unlawful violation of the environment at the same time accepting the fact that the environmental impact is necessary. That principle constitutes the basis of the European environmental protection law.

Prevention requires from the state creating proper legal instruments aimed at its realization, in particular by specifying the limits, standards and indicating in which situations it is necessary to obtain the environmental permit.

The state has an obligation not only to prevent pollution but also to control it. It means that the state must constitute proper procedures of control and register the results under the monitoring system.

Another important regulation is forest protection stemming from the art. 26 of the Constitution of China. As it has been pointed out above, the People's Republic of China protects the forests and prevents their violation. The forest protection occurs again in the regulation. The following question occurs – to what purpose the Chinese legislator referred twice to the forest protection? In the first case mentioned before forest protection concerned natural environmental reserves, while the art. 26 of the Constitution of China refers to the forest protection in the context of preventing the environment violation. Also protection against pollution is important which forests are able to assure. Also solutions accepted in the art. 26 should be treated as important from the point of view of the environment in that context. The constitutional legislator draws our attention to the forests as a natural means of protecting the environment against pollution. On the other hand however, the legislator seems to be aware of the significance of forests for the environmental protection, in particular the climate.

Solutions concerning the environmental protection, in particular the ones referring to the climate protection in the Constitution of the People's Republic of China should be accepted with satisfaction. The most important drawback, apart from the lack of clear reference to the rights of an individual to live in favourable conditions, is the lack of reference to the sustainable development principle on any grounds. The Chinese legislator never refers to that principle in the Constitution of China. It seems that it is difficult to protect the environment without referring to the sustainable development principle in the modern state. Reference to that principle strengthens the constitutional bases of the environmental protection. It also makes them more universal and connected with global means of the environmental protection which has the fundamental significance in case of the climate protection.

The art. 5 of the Constitution of the Republic of Poland may be cited as an example. It says that “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.”

Reference to that clause could strengthen the climate protection in the Constitution of China all the more so because the legislator realizes the necessity to cooperate with other countries to the extent of challenges that the modern world poses. Therefore the sustainable development principle should be made *de lege ferenda* the basic principle of the Chinese environmental protection law. Also direct reference to the concept of sustainable development would be legitimate.

Summing up, the solutions adopted in the Constitution of the People's Republic of China referring directly to the climate protection are good ones. The legislator treats the environmental protection, including the climate protection as the constitutional value which is important in itself. Also wide regulation of notions concerning the environmental protection, including the climate protection, is justified. The basic duties concerning the climate

protection are imposed on the state by the constitutional legislator. The very state is responsible for the environmental state and its protection. Therefore the state should constitute regulations favourable to the environmental protection both aiming at that directly or indirectly. The state should also assure financial means for organizing the environmental protection and ecological education.

The state should assure the proper level of the environment due to the protection of health or life of an individual and prevent the environmental pollution, including the risk of its violation.

The lack of direct regulation of individuals' right to the life in favourable environment as well as the lack of reference to the sustainable development principle are drawbacks of the Constitution of the People's Republic of China. In the future constitutional regulations should be supplemented with these elements.