

The Construction of Judicial System in the Yellow River Basin-Cross-Administrative Centralized Jurisdiction Mechanism

Wen Liu, Guanqing Liu, Xiaomeng Hou*
Shandong University of Technology, Zibo 255000, China.

Abstract: China's Yellow River Basin is exploring cross-provincial centralized jurisdiction mechanism to crack the governance problems. There are still many problems in judicial practice in various places, so China should start from strengthening legislation and reasonable design of jurisdiction rules to solve the above-mentioned problems as soon as possible.

Keywords: Jurisdictional System; Cross-Provincial Centralized Jurisdiction Mechanism; Yellow River Basin Governance

1. Overview

1.1 The background of constructing a cross-provincial centralized jurisdiction mechanism

In order to better perform the judicial functions of the people's courts and ensure the high-quality development and ecological protection of the Yellow River Basin, the Supreme People's Court issued the Opinions of the Supreme People's Court on Judicial Services and Protection of Ecological Protection and High-Quality Development of the Yellow River Basin on June 5, 2020. This document, for the first time, clearly sets out the requirements for establishing a judicial mechanism for the Yellow River Basin at the level of normative documents. We need to systematize and synergize the judicial protection of the Yellow River Basin in order to comprehensively improve the quality and efficiency of basin-wide management and judicial services to meet the needs of ecological protection and high-quality development in the Yellow River Basin. This document specifies eight aspects of establishing a basin-wide enforcement mechanism, one of which is an important measure to establish a centralized mechanism for hearing cases in the Yellow River Basin that meets the needs of environmental protection and high-quality development.

1.2 The reasons for constructing a cross-provincial centralized jurisdiction mechanism.

First, the natural characteristics of disputes in the Yellow River Basin make the resolution of environmental cases more complex and systematic.

If the administrative division is followed, it may artificially divide natural functional areas such as regions and watersheds, which is not conducive to the advancement of the investigation and trial process. Therefore, the above-mentioned documents require that all regions should gradually change the current jurisdictional model, from the natural characteristics of environmental factors such as water and air, to watersheds and other ecosystems or to ecological functional areas as a unit to explore a special trial of environmental resources across administrative divisions.

Secondly, the method of setting up judicial districts with a high degree of overlap with administrative districts has many drawbacks.

China basically based on the administrative division to establish the court, and relying on the administrative division of the court set up in general only to accept the cases that occur within the district. So what are the disadvantages of this way of setting up courts?

First, the court's people, money and materials are subject to the local authorities. Secondly, judicial resources are unevenly distributed today. All of the above problems may affect the rights and interests of the parties, and thus defeat the important original purpose of the jurisdictional setting.

2. The current stage of judicial practice and dilemma

2.1 Judicial Practice

Divided according to the geographical range spanned, the High People's Courts around the world provide two main options for centralized jurisdiction: partial centralized jurisdiction and full centralized jurisdiction. Partial centralized jurisdiction refers to cross-regional centralized jurisdiction in a certain geographical or ecological functional area within the provincial zoning, and Shaanxi and Hunan have adopted this judicial practice. For example, Hunan has established a special environmental resource court for Dongting Lake according to the actual situation of the province, which is responsible for environmental resource cases occurring across the Dongting Lake basin. The so-called total centralized jurisdiction refers to the comprehensive promotion of cross-regional centralized jurisdiction for environmental resources cases throughout the provincial division, and such programs have been adopted in Jiangsu, Chongqing and other places.

Throughout the country's centralized jurisdiction practice, the following two criteria are generally adopted to determine the establishment of the court: first, the watershed, lake and other ecological functional areas or ecosystems as a unit; second, comprehensive consideration of the regional population, the level of economic development, the number of environmental resources cases and other factors. Jiangsu, Guizhou, Hainan and other places adopt the former determination criteria, while Chongqing and Guangdong adopt the latter.

2.2 The practical dilemma of cross-regional centralized jurisdiction for environmental resources cases

2.2.1 The legitimacy of the reform basis is insufficient.

The premise of formulating legal norms is that the higher law has a certain room for interpretation, otherwise it violates the rule of hierarchy of effect. In fact, the specific reform measures adopted by higher people's courts across the country have broken through the existing legal framework, making it difficult to determine their legal reasonableness. Second, although the Organic Law of the People's Courts has been revised to remove the institutional obstacles to centralized judicial reform, the main elements of reform of jurisdictional rules in the reform provisions around the country are indeed not clearly provided for by law in the criminal and civil law, except for the Administrative Procedure Law, which has a clear basis. Cross-territorial centralized jurisdiction is ostensibly a variant of territorial centralized jurisdiction, but according to the nationwide rules and practices, it actually invokes the rules of designated jurisdiction and becomes a designated jurisdiction characterized by routine, authority and bulk, which obviously defeats the legislative purpose of designated jurisdiction.

2.2.2 Confusion of environmental jurisdiction.

After the Administrative Litigation Law added the provision of cross-administrative jurisdiction of administrative litigation, some local high people's courts have carried out centralized jurisdiction of environmental resources administrative cases within the delineated jurisdictional areas, and further changes in the jurisdictional rules of environmental resources administrative cases under this circumstance will inevitably cause confusion in the jurisdictional system.

2.2.3 Cross-regional centralized jurisdiction is limited to below provincial administrative divisions

Currently, cross-regional jurisdiction is carried out at the city and county level under the premise of provincial administrative divisions, and its role in environmental resource disputes related to cross-regional regional watersheds, ecological functional areas and atmospheric pollution is very limited because the reform has not yet been completed. This phenomenon is not only inconsistent with the goals of jurisdictional reform, but can even lead to more concentrated and pronounced local protectionism.

3. The construction of cross-administrative centralized jurisdiction mechanism in the Yellow River Basin

3.1 Strengthening the legitimacy of the basis for cross-regional centralized jurisdiction reform

Currently, there is a broad consensus in theory and practice on reforming jurisdictional rules for environmental resource cases. Addressing issues such as local protectionism and inter-regionalism is also an important element and motivation for improving the judicial adjudication of environmental resource cases and conducting cross-regional centralized jurisdiction reform. Even though the current reforms have the potential to undermine the simplicity of litigation and the balanced allocation of cases, they are still necessary and legitimate in terms of improving the quality and efficiency of litigation, protecting the legitimate rights and interests of the parties, and unifying the scale of adjudication. Therefore, the nature of centralized jurisdiction should not be limited to the interpretation of the designated jurisdiction, and can directly provide new jurisdictional rules for it.

Whether to treat it as a general jurisdictional system or as a supplementary special jurisdictional system is also the focus of our discussion at present. In the long run, if the jurisdictional system itself fails to achieve a certain balance, its practical consequences may be the opposite of the ideal. Cross-regional centralized jurisdiction is not suitable as a general jurisdictional system, but should be treated as a complementary special jurisdictional system.

3.2 System design of cross-regional centralized jurisdiction

Based on the existing jurisdictional rules and practices, this paper believes that the establishment of a centralized jurisdictional mechanism for cross-regional environmental resources cases in the Yellow River Basin can be roughly divided into the following two steps.

First, the establishment of a pilot mechanism for centralized jurisdiction of inter-regional ecological and environmental protection cases within the province. Given that the courts in the Yangtze River Basin have mature jurisprudence on intra-provincial centralized jurisdiction, the Yellow River Basin can refer to the experience and practice of the Yangtze River Basin when conducting the pilot project.

Second, establish a watershed court. In order to overcome local protectionism, centralized correction of local justice should be introduced. China could establish a basin court in the Yellow River Basin to serve as a central court of first instance for the Yellow River Basin. Likewise, basin courts could be established in other larger basins. A watershed court would essentially be a specialized court that would hear cross-provincial ecological and environmental protection cases, but would not be limited to ecological and environmental protection cases.

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