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THE NEW CHINESE CIVIL CODE  
AND ITS CONTRIBUTION  
TO SUSTAINABLE DEVELOPMENT<sup>1</sup>

1. INTRODUCTION

Even though many efforts and vigorous schemes at district, provincial, and central government levels have been launched at different times, the People's Republic of China, still being the world's leading manufacturing industry, continues to face numerous critical environmental challenges<sup>2</sup>. These challenges are caused mainly by uncontrolled or even unplanned giant emissions of SO<sup>2</sup> and CO<sup>2</sup> that are affecting Chinese society. Heavy metal contamination, which is mainly caused by anthropogenic activities, poses threats to human health in both industrial and agricultural regions in China<sup>3</sup>. The widespread deterioration of surface water quality in inland water bodies in China also represents one of the most serious environmental threats to human health and ecosystem services<sup>4</sup>. According to Mehran Idris Khan

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<sup>1</sup> This contribution is an extended and updated version of the presentation given during the “Sustainable Development and Human Rights” international conference organised by the Coordination Centre for Foreign Law Schools of the Jagiellonian University, in Krakow, on 25<sup>th</sup> of April 2018.

<sup>2</sup> M. Łągiewska: *Charakterystyka chińskiego prawa cywilnego — wybrane aspekty*, Gdańskie Studia Azji Wschodniej 2017/12, p. 92.

<sup>3</sup> S. Cheng: *Heavy metal pollution in China: Origin, pattern and control*, Environmental Science and Pollution Research 2003, Issue 10, pp. 192–198.

<sup>4</sup> T. Ma, N. Zhao, Y. Ni, J. Yi, J.P. Wilson, L. He, Y. Du, T. Pei, Ch. Zhou, C. Song, W. Cheng: *China's improving inland surface water quality since 2003*, Science Advances 2020, Vol. 6, no. 1, p. 1, <https://doi.org/10.1126/sciadv.aau3798> (access: 8 March 2020).

and Yen-Chiang Chang, the “Chinese government should prioritise attaining a low-carbon economy and an environment-friendly society. In addition, focus should also be given to ensure implementation with contrast to the analyses of the outcomes, public interest and participation, transparency, efficiency suggesting penalties on the responsible, and then to review compatibilities of the environmental laws with thoroughly analysed results in order to achieve the ultimate environmental goals for a better environmental future for China and the world at large”<sup>5</sup>.

Sustainable development is often presented as an intersection between the environment, society and economy, which are perceived as separate although connected entities<sup>6</sup>. Sustainable development is also commonly related to the protection of the environment as an attempt to link the survival of life on our planet with the preservation of natural resources and environmental challenges faced by every society, country and also humanity as a whole<sup>7</sup>. We have become accustomed to the idea that environmental law deals with environmental protection issues, but this is not the only available legal option.

Over the last decades, a huge number of environmental laws were enacted in China, including the Water Law<sup>8</sup>, the Law on the Prevention and Control of Environmental Noise Pollution<sup>9</sup>, the Air-Pollution Prevention and Control Law<sup>10</sup>, the Water Pollution Prevention and Control Law<sup>11</sup>, the Marine Environment Protection Law<sup>12</sup>, the Promotion of Recycling Economy Law<sup>13</sup>, the Soil Pollution Prevention and Control Law<sup>14</sup>, and the Environment Impact Assessment Law<sup>15</sup>. Unfortunately, protecting nature through environmental protection laws does not seem to be sufficient to reach the goal that was proposed by them. Earlier, environmental protection in China was mainly focused on environmental law, now it is changing. The PRC has started to put much more effort into sustainable development and protection of the environment. As a result, Chinese civil law has begun to respond to ecological problems as well.

In recent years there has been a visible and obvious trend in China, described by some as the “publicization of private law”, in which state legalism determines the country’s legal development<sup>16</sup>. Administrative litigation in China is deeply rooted

<sup>5</sup> M. Khan, Y. Chang: *Environmental Challenges and Current Practices in China — A Thorough Analysis*, Sustainability 10(7) 2019, p. 15, <https://doi.org/10.3390/su10072547> (access: 30 June 2019).

<sup>6</sup> B. Giddings, B. Hopwood, G. Brein: *Environment, economy and society: fitting them together into sustainable development*, Sustainable Development, Vol. 10, Issue 4, p. 187.

<sup>7</sup> M. Djukanovic: *Environment and Sustainable Development*, Belgrade 2008, p. 86.

<sup>8</sup> 中华人民共和国水法.

<sup>9</sup> 中华人民共和国环境噪声污染防治法.

<sup>10</sup> 中华人民共和国大气污染防治法.

<sup>11</sup> 中华人民共和国水污染防治法.

<sup>12</sup> 中华人民共和国海洋环境保护法.

<sup>13</sup> 中华人民共和国循环经济促进法.

<sup>14</sup> 中华人民共和国土壤污染防治法.

<sup>15</sup> 中华人民共和国环境影响评价法.

<sup>16</sup> X. Yu: *State Legalism and the Public/Private Divide in Chinese Legal Development*, Theoretical Inquiries in Law 2014, 15.1, p. 48.

in its contemporary social and political structure and its development is still fraught with difficulties<sup>17</sup>, which leads to the “publicization of private law”, because civil law and civil litigation are considered to be more predictable and stable<sup>18</sup>.

The new Chinese civil code, adopted by the 13<sup>th</sup> National People’s Congress on 28 May 2020, was announced as the beginning of a new era and the next step in the social and technological development of China<sup>19</sup>. One of the proposed innovations in it is the so-called “Green Principle”, which allows the protection of the environment through civil law. The aim of this article is to show the progress and prospects of implementing Sustainable Development clauses to the Chinese civil law system and to show how these solutions can become an inspiration for the development of Polish law in this matter. I will use legal comparative and normative analyses as methods to discuss and explain this problem. Firstly, I will describe the role of the general part of the Chinese Civil Code in environmental protection and then I will discuss some specific provisions in the Contract Law and Tort Law parts of the newly adopted Civil Code of the People’s Republic of China<sup>20</sup>.

## 2. THE GENERAL PART OF THE CHINESE CIVIL CODE

The first step in the process of the so-called “greening” of Chinese civil law has already been taken. On 15 March 2017, the Fifth Session of the 12<sup>th</sup> National People’s Congress passed the General Part of the Civil Code<sup>21</sup> and Article 9 thereof introduced the “Green Principle” as one of the basic principles of Chinese civil law.

According to Art. 5 of the Constitution of the Republic of Poland of 1997: “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”<sup>22</sup>. Unfortunately, there is no general rule of civil law in Polish law that would be comparable

<sup>17</sup> H. He: *Litigations without a Ruling: The Predicament of Administrative Law in China*, *Tsinghua China Law Review* 2011, Vol. 3, pp. 257–281.

<sup>18</sup> T. Zhai, Y. Chang: *The Contribution of China’s Civil Law to Sustainable Development: Progress and Prospects, Sustainability*, Vol. 11, Issue 1, January (I) 2019, p. 7, <https://doi.org/10.3390/su11010294> (access: 8 June 2020).

<sup>19</sup> I. Szpotakowski: *Suwerenność państwa i rządy prawa: kodyfikacja prawa prywatnego w Chinach*, *Świat Idei i Polityki*, Issue XVII, p. 169.

<sup>20</sup> Adopted by the 13<sup>th</sup> National People’s Congress on 28 May 2020 and will enter into effect on 1 January 2021.

<sup>21</sup> General Provisions of the Civil Law of the People’s Republic of China. Available online: <http://en.pkulaw.cn/display.aspx?cgid=291593&lib=law> (access: 30 June 2019).

<sup>22</sup> In Polish: Art. 5 “Rzeczpospolita Polska strzeże niepodległości i nienaruszalności swojego terytorium, zapewnia wolności i prawa człowieka i obywatela oraz bezpieczeństwo obywateli, strzeże dziedzictwa narodowego oraz zapewnia ochronę środowiska, kierując się zasadą zrównoważonego rozwoju”.

to Art. 9 of the GPCC. Art. 26 of the Constitution of the People's Republic of China provides that "the State protects and improves the living environment and the ecological environment. It prevents and controls pollution and other public hazards. The State organizes and encourages afforestation and the protection of forests" (第二十六条 国家保护和改善生活环境和生态环境, 防治污染和其他公害. 国家组织和鼓励植树造林, 保护林木)<sup>23</sup> and in 2001 the *Qi Yuling*<sup>24</sup> case opened an era in China of applying Constitutional Law directly in private law cases, but unfortunately in 2008 the judicial interpretation regarding the case of *Qi Yuling* by the Supreme Court was rescinded and as a result the application of Constitutional Law by judges in China is no longer allowed<sup>25</sup>.

According to Article 9 of the General Part of the Civil Code: "the parties to civil legal relations shall conduct civil activities contributing to the conservation of resources and protection of the environment" (第九条 民事主体从事民事活动, 应当有利于节约资源, 保护生态环境<sup>26</sup>). Any legal act shall always be conducted by aiming to save resources and protect the ecological environment, which in other words means sustainability. It is worth considering the rationality of this decision and trying to answer the question — is civil law really a good solution to solve some environmental protection difficulties?

The implementation of the "Green Principle" as the starting point facilitates the protection of public health and welfare from environmental harm and because of that, it is a worthy supplement to environmental law enforcement in China<sup>27</sup>. The entire process of the "greening" of private law will make great contributions to sustainable development not only by establishing Article 9 of the GPCC but also through specific rules of other sections of civil law regulating personal and property relations<sup>28</sup>. According to Tiantian Zhai and Yen-Chiang Chang, "civil law as a private legal mechanism has some important properties that make it a superior tool at least necessary as a supplement to public enforcement. It is even contended that other laws rather than environmental law are more effective at solving China's environmental problems to some degree"<sup>29</sup>. This means that the "greening" of civil law could become the best solution for flaws and loopholes of environmental law in the People's Republic in China and it will be applicable to all types of environmental pollution in this country.

<sup>23</sup> The Constitution of the People's Republic of China — adopted on 4 December, 1982 by the Fifth National People's Congress of the People's Republic of China.

<sup>24</sup> *Case 1. Qi Yuling v. Chen Xiaoqi et al., Opinion by the Higher People's Court of Shandong Province*, Chinese Education & Society 2006, Vol. 39, no. 4, pp. 60–74.

<sup>25</sup> J. Fu: *Modern European and Chinese Contract Law: A Comparative Study of Party Autonomy*, Alphen aan den Rijn 2011, p. 165.

<sup>26</sup> Art. 9 of the General Part of the Civil Law of the People's Republic of China <http://en.pkulaw.cn/display.aspx?cgid=291593&lib=law> (access: 30 June 2019).

<sup>27</sup> T. Zhai, Y. Chang: *op. cit.*, p. 6.

<sup>28</sup> *Ibidem*, p. 15.

<sup>29</sup> *Ibidem*, p. 7.

The first problem with Art. 9 of the GPCC is whether or not it has been formulated too generally. The “Green Principle” does not explicitly address the consequences of legal acts violating this new basic principle. Special laws shall regulate the details but, on the other hand, Art. 9 of the GPCC aims to combine economic development and environmental protection and judges shall consider it in their future decisions because, as a fundamental principle, Art. 9 shall be of the same value as the principles of equity, free will, fairness, lawfulness and good faith<sup>30</sup>.

Another interesting question is whether it is possible to exclude the “Green Principle” by applying the principle of freedom of contract. In my opinion, it is not possible. In Polish law the principle of freedom of contract is the heart of the system of contractual obligations and in addition to property rights, it is one of the main pillars of civil law as such<sup>31</sup>. From the perspective of Chinese law, the principle of freedom of contract is interpreted somewhat differently than under Polish law. The previous version of Art. 3 of the General Principles of Civil Law from 1986<sup>32</sup> and Art. 4 of the General Part of the Civil Code make it clear that each party has equal status in any civil activity (第四条 民事主体在民事活动中的法律地位一律平等). Even if one party is a public authority, when dealing with civil issues, such as entering into a contract with subjects governed by civil law, it is prohibited from forcing the relevant counterpart to agree to any terms against their free will, which logically agrees with the Principle of Freedom of Contract, because: “Unless otherwise restricted by law, the parties are free to negotiate the terms of civil activity between them”<sup>33</sup>.

Of course, in the Chinese Contract Law (CCL)<sup>34</sup> it is possible to identify the concept of freedom of contract but, as usual, it is freedom of contract with Chinese legal characteristics. According to Art. 4 of the CCL: “A party is entitled to enter into a contract voluntarily under the law, and no entity or individual may unlawfully interfere with such right (第四条 当事人依法享有自愿订立合同的权利, 任何单位和个人不得非法干预)”. The principle of “making a contract voluntarily” can mean that the parties are free to conclude a contract in accordance with the law and in result of that, the “voluntariness” could be illustrated in six aspects. The parties have the freedom to decide whether or not to enter into a contract, have the

<sup>30</sup> Wenfei Attorneys-at-law: *Adoption of General Rules on Civil Law*, China Legal Report, June 2017, Beijing, pp. 4–5 [http://www.wenfei.com/fileadmin/archives/clar/170616\\_China\\_Legal\\_Report\\_June\\_2017.pdf](http://www.wenfei.com/fileadmin/archives/clar/170616_China_Legal_Report_June_2017.pdf) (access: 7 July 2019).

<sup>31</sup> M. Szczygieł: *Właściwość (natura) stosunku zobowiązaniowego jako ograniczenie zasady swobody umów*, Palestra 1997, 41/7–8(475–476), p. 17.

<sup>32</sup> The General Principles of the Civil Law of the People’s Republic of China (Adopted at the Fourth Session of the Sixth National People’s Congress on April 12, 1986 and promulgated by Order No. 37 of the President of the People’s Republic of China on April 12, 1986), [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383941.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm) (access: 1 July 2019).

<sup>33</sup> H. Zheng: *General Part* (in: *Chinese Civil Law*, Ed. Y. Bu, München 2013, p. 5).

<sup>34</sup> The Contract Law of the People’s Republic of China, March 15, 1999, [http://www.fdi.gov.cn/1800000121\\_39\\_2741\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_2741_0_7.html) (access: 31 July 2019).

freedom to determine with whom the contract is to be made, they also have the freedom to determine the contents of the contract and choose contract forms, have the freedom to modify or terminate the contract and finally, they have the freedom to choose the methods of settlement for disputes<sup>35</sup>.

From the perspective of Polish law, most statutory civil rules have the nature of default rules (*ius dispositivum*) — meaning that they apply only “in default” of the parties’ agreement, which obviously can freely provide otherwise. In countries like China, where the default or mandatory character of rules is often not explicit in the statutory text, courts often tend to think that default rules embody some kind of superior notion of fairness and, as a result, there is a tendency to apply them contrarily to the terms of the contract<sup>36</sup>. According to Art. 7 of the Contract Law of the People’s Republic of China: “In concluding and performing a contract, the parties shall comply with the laws and administrative regulations, respect social ethics, and shall not disrupt the social and economic order or impair public interests (第七条 当事人订立, 履行合同, 应当遵守法律, 行政法规, 尊重社会公德, 不得扰乱社会经济秩序, 损害社会公共利益)”.

Therefore, in the PRC, due to the lack of division between default or mandatory rules in civil law and the fact that the parties during concluding a contract shall comply with the laws, the exclusion of the “Green Principle” will be contrary to the law as threatening the environment. The environment is in some sense a common good and therefore it is not possible to exclude Art. 9 of the GPCC in contracts between parties according to Chinese law. Not only because it is against the spirit and purpose of the general rule, but also because it could be considered as against fairness by the People’s Court<sup>37</sup>. Art. 9 of the GPCC aims to close legal loopholes, but the use of unclear terms in the provision, such as “saving resources” (节约资源) extends judicial discretion, which increases uncertainty and limits the development of business activities<sup>38</sup>.

In the case of the territorial jurisdiction of the civil law provisions according to Art. 11 of the GPCC, all civil activities within the territory of the People’s Republic of China shall be governed by the laws of the PRC, unless otherwise provided for in the statute (第十二条 中华人民共和国领域内的民事活动, 适用中华人民共和国法律. 法律另有规定的, 依照其规定). It is therefore unlikely that Chinese companies operating outside China will be liable for their actions only upon Art. 9 of the GPCC.

<sup>35</sup> M. Zhang: *Freedom of Contract with Chinese Legal Characteristics: A Closer Look at China’s New Contract Law*, Temple International & Comparative Law Journal 2000, Vol. 14, pp. 244–246.

<sup>36</sup> M. Pargendler: *The Role of the State in Contract Law: The Common-Civil Law Divide*, Yale Journal of International Law 2018, Vol. 43, No. 1, pp. 155–156.

<sup>37</sup> M. Pargendler: *op. cit.*, p. 155.

<sup>38</sup> G. Lebedowicz, I. Szpotakowski, B. Wiśniewski: *Zarys chińskiego prawa cywilnego w dobie kodyfikacji*, Toruń 2019, p. 117.

### 3. THE GREENING OF CIVIL LAW IN CONTRACT LAW AND TORT LAW AS PARTS OF THE NEWLY ADOPTED CHINESE CIVIL CODE<sup>39</sup>

As was mentioned before, Art. 9 of the GPCC is just a general principle and special laws shall regulate the details. In the contract law part of the Civil Code of the People's Republic of China<sup>40</sup>, which will enter into effect on 1 January 2021, there are three articles which are connected with Art. 9 of the GPCC — Art. 509 of the CL, Art. 625 of the CL and Art. 558 of the CL.

According to Art. 509 of the CL: “The parties shall fully perform their obligations in accordance with the agreement [...]. In the process of performing the contract, the parties should avoid damage to the ecological environment, polluting the environment and waste resources”<sup>41</sup>. It is quite a general and unclear rule but it is mainly addressed to judges. Chinese judges, while applying legal rules, may change the scope, the meaning or the purpose of the clause so that a fair and just judgment can be given. The specificity of the Chinese language allows them to interpret laws or specific legal terms in a very broad way, which also allows them to construct a legal rule that extends significantly and to modify its current meaning in a specific case<sup>42</sup>. Accordingly, sometimes in Chinese law it is possible for the judges to act *ex officio* even if the lawsuit has been filed for another reason<sup>43</sup> and in that case, they will use general rules like Art. 509 of the CL.

Art. 625 of the CL constitutes: “In accordance with the provisions of laws, administrative regulations or the agreement between the parties concerned, where the subject matter shall be recycled after its expiry date, the seller shall have the obligation to recycle the subject matter by itself or by entrusting a third party (第六百二十五条 依照法律, 行政法规的规定或者按照当事人的约定, 标的物在有效使用年限届满后应予回收的, 出卖人负有自行或者委托第三人-对标的物予以回收的义务)”. It is worth mentioning that it is the first time that the

<sup>39</sup> The Civil Code of the People's Republic of China adopted on 28 May 2020 (中华人民共和国民法典) governs, respectively: the general part, rights in rem, contracts, personality rights, marriage and family, inheritance, and tort liability.

<sup>40</sup> The contract law part of the Civil Code of the People's Republic of China, May 2020, <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml> (access: 8 June 2020).

<sup>41</sup> Chinese-language version: 第三百条 当事人应当按照约定全面履行自己的义务。当事人应当遵循诚信原则, 根据合同的性质, 目的和交易习惯履行通知, 协助, 保密等义务。当事人在履行合同过程中, 应当避免浪费资源, 污染环境和破坏生态。

<sup>42</sup> T. Yu: *Approaches for Dealing with the “Natural Person” the Chinese Legal System: A Statutory Way and a Principled Way*, German Law Journal 2017, Vol. 18, Issue 5, p. 1127.

<sup>43</sup> Chinese judges are not limited in deciding cases by the evidence presented by the parties but, at any stage of the litigation, they are able to actively investigate the case and gather evidence, see: J. Zhong, G. Yu: *Establishing the Truth on Facts: Has the Chinese civil process achieved this goal?*, Journal of Transnational Law and Policy 2004, 13 (2), p. 393–443; and also: W. Ji: *The Judicial Reform in China: The Status Quo and Future Directions*, Indiana Journal of Global Legal Studies 2013, Vol. 20, No. 1, p. 198.

Chinese contract law has mandated resource conservation and environmental protection during or after the performance of the contract. It also mandates the parties' obligation for the contract to recycle the subject matter after the termination of the contract which can help reduce solid waste and the pollution that it causes<sup>44</sup>. Those recycling provisions seem to be extremely important because the PRC still has not established a mandatory recycling system. Recycling is also mentioned in art. 558 of the CL: "After termination of the rights and obligations of the contract, the parties shall, in accordance with the principle of good faith, perform obligations such as notification, assistance, confidentiality, and recycling in accordance with transaction habits (第五百五十八条 债权债务终止后,当事人应当遵循诚信等原则,根据交易习惯履行通知,协助,保密,旧物回收等义务)".

In the Tort law part of the Civil Code of the People's Republic of China<sup>45</sup>, which will enter into effect on 1 January 2021, there is a dedicated chapter VII called "Environmental pollution and damage to the ecological environment" (第七章 环境污染和生态破坏责任) which contains eight provisions. In my opinion, tort liability is the best way to use civil law in the context of environmental protection. Generally speaking, private enforcement mainly refers to environmental tort litigation, which allows anyone injured by environmental damage to sue for monetary damages or even injunctive relief<sup>46</sup>. First of all, according to the Chinese Tort law (Art. 1230), when the dispute arises due to pollution of the environment or due to the damage to the ecological environment, the tortfeasor will bear the burden of proof for the non-responsibility or mitigation of liability and the absence of causality between the act and the damage. This solution will probably reduce the cost of the litigation for the injured party and it will facilitate the pursuit of claims. Second of all, Chinese culture, unlike American one, is definitely not a compensation culture because of the fear of losing not only in court but also losing reputation<sup>47</sup>, so strict tort liability might become a powerful deterrent factor across Chinese society.

Therefore, I took the liberty to translate some articles from the newly adopted Civil Code of the People's Republic of China to better illustrate further comparative discussions about differences between Polish and Chinese law, which are listed in the table below.

<sup>44</sup> T. Zhai, Y. Chang: *op. cit.*, p. 10.

<sup>45</sup> Part VII of the Civil Code of the People's Republic of China — The tort law, May 2020, <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml> (access: 8 June 2020).

<sup>46</sup> T. Zhai, Y. Chang: *op. cit.*, p. 7.

<sup>47</sup> S. Kordasiewicz: *Historyczna i międzynarodowa perspektywa mediacji* (in:) *Mediacje. Teoria i praktyka*, Eds. E. Gmurzyńska, R. Morek, Warszawa 2014, p. 42.





第七章 环境污染和生态破坏责任	Chapter VII: Environmental pollution and damage to the ecological environment
第一千二百二十九条 因污染环境, 破坏生态造成他人损害的, 侵权人应当承担侵权责任.	Article 1229 If the damage to others is caused by pollution of the environment or the destruction of the ecological environment, the infringer shall bear the tort liability.
第一千二百三十条 因污染环境, 破坏生态发生纠纷, 行为人应当就法律规定的不承担责任或者减轻责任的情形及其行为与损害之间不存在因果关系承担举证责任.	Article 1230 If a dispute arises due to pollution of the environment or damage to the ecological environment, the tortfeasor shall, as stipulated by law, bear the burden of proof for the non-responsibility or mitigation of liability and the absence of causality between the act and the damage.
第一千二百三十一条 两个以上侵权人污染环境, 破坏生态的, 承担责任的大小, 根据污染物的种类, 浓度, 排放量, 破坏生态的方式, 范围, 程度, 以及行为对损害后果所起的作用等因素确定.	Article 1231 If two or more tortfeasors pollute the environment or cause ecological or environmental damage, the seriousness of the liability of each tortfeasor shall be determined according to the type of pollutant, the volume of emission, the effect of the harmful act on the damage and other factors.
第一千二百三十二条 侵权人违反法律规定故意污染环境, 破坏生态造成严重后果的, 被侵权人有权请求相应的惩罚性赔偿.	Article 1232 If the tortfeasor intentionally violates the law and intentionally pollutes the environment or causes ecological or environmental harm which will lead to serious consequences, the infringer has the right to request corresponding punitive damages.

Figure 1: Source: Created for the purpose of this research.

According to Xinbao Zhang in his book *Legislation of Tort Liability Law in China*, liability for damage caused by polluting the environment is a new type of tort liability<sup>48</sup>. The author thinks that it is necessary to make enumerative provisions on the civil liability for damage caused by polluting the environment in the future civil code, and integrate relevant provisions of the environmental protection law into the code, because this kind of tort liability applies the principle of non-fault liability and also it has particularity in aspects of proof and certification of causation and class action<sup>49</sup>.

<sup>48</sup> X. Zhang: *Legislation of Tort Liability Law in China*, Beijing 2018, p. 223.

<sup>49</sup> *Ibidem*.

## 4. CONCLUSIONS

Although Polish and Chinese legal systems, political systems and geographic realities differ significantly, the use of Chinese solutions to protect the environment and save resources through the “greening” of civil law might be useful to Poland. The prospect of protecting the environment by provisions of contract law and tort law is not a new idea but so far it has not been introduced directly into the Polish legal order and I believe it is a good time to change it. In comparison with Chinese civil law, the Polish legislator specifies that unless the Environmental Protection Law of 27 April 2001 provides otherwise, the provisions of the Civil Code shall apply to liability for damage caused by impact on the environment<sup>50</sup>. The reference to the provisions of the Civil Code in the Polish Environmental Protection Law Act emphasizes its importance and universality<sup>51</sup>. It is worth noting that due to the fact that the obligation to protect the environment usually is not regulated by contracts (but is a universal obligation), liability in tort has greater importance in the Polish legal system<sup>52</sup>. In addition to national law, the current Polish environmental law is impacted by the implementation of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage<sup>53</sup>. However, according to Ludwig Krämer, the overall impression of the directive is that it has a rather limited field of application<sup>54</sup>, although it is crucial to remember that the numerous exemptions, possibilities and the absence of regulating the burden of proof (this works in favour of the polluter) included in the directive allow the Member States to enact different national provisions<sup>55</sup>. This is what makes it a directive which does not lead to some sort of unified or harmonised system in the European Union<sup>56</sup>.

When considering Chinese environmental and civil law, it is necessary to remember that we are not in Brussels anymore. In China, the problem of the so-called “publicization of private law”, as I wrote in the introduction, results from the complexity, uncertainty and many legal loopholes in Chinese public law legislation and procedures. Contrary to Polish law, the Chinese contract law will regulate the issue of environmental protection. Tort liability unfortunately is not always reflected in the scope of environmental protection in Poland because sometimes environmental

<sup>50</sup> Art. 32 of the Act of 27 April 2001 Environmental Protection Law, [https://esdac.jrc.ec.europa.eu/Library/Themes/Contamination/workshop\\_Nov2003/legislation/PolandEnvironmentalProtectionAct.pdf](https://esdac.jrc.ec.europa.eu/Library/Themes/Contamination/workshop_Nov2003/legislation/PolandEnvironmentalProtectionAct.pdf) (access: 19 August 2019).

<sup>51</sup> J.J. Skoczylas: *Odpowiedzialność cywilna na podstawie ustawy — prawo ochrony środowiska*, Przegląd Sądowy 2003, No. 4, p. 62.

<sup>52</sup> W. Radecki: *Odpowiedzialność prawna w ochronie środowiska*, Warszawa 2002, p. 89.

<sup>53</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0035> (access: 8 March 2020).

<sup>54</sup> L. Krämer: *EU Environmental Law*, London 2012, p. 176.

<sup>55</sup> *Ibidem*.

<sup>56</sup> *Ibidem*.



damage is a result of actions permitted by the state, so fault liability does not apply<sup>57</sup>. In the past, there were several cases concerning causing damages by harming the environment in the Hubei province, but the court did not make an appropriate judgment in these cases due to the fact that they did not comply with the components of environmental tort contained in Article 41 of the Environmental Protection Law<sup>58</sup> and in Article 124 of the former General Principles of Civil Law<sup>59</sup>. I believe Art. 9 of the GPCC will change this situation.

To sum up, I would like to emphasize that even though there is a lot of potential in the Polish Civil Code, in my opinion this problem is not sufficiently addressed by the current Polish civil law regulations. Art. 9 of the GPCC lays down the overall framework for the Chinese Civil Code and will be a guiding principle for all of the following sections that were adopted by the 13<sup>th</sup> National People's Congress on 28 May 2020. Until the whole civil code comes into force in January 2021, I cannot cite any particular examples of how environmental protection in China will change in the next few years but the "Green Principle" and specific articles from the Contract and Tort parts of the Chinese Civil Code relating to environmental protection are, in my opinion, a good solution. In the future we should consider implementing it into Polish civil law. Moreover, considering the current situation in Poland, I would argue that this implementation is long overdue.

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<sup>57</sup> J.J. Skoczylas: *Pojęcie i rodzaje odpowiedzialności prawnej w ochronie środowiska*, Zeszyty Naukowe SGSP, No. 41, 2011, p. 127.

<sup>58</sup> 中华人民共和国环境保护法 (主席令第九号), [http://www.gov.cn/zhengce/2014-04/25/content\\_2666434.htm](http://www.gov.cn/zhengce/2014-04/25/content_2666434.htm) (access: 8 March 2020).

<sup>59</sup> X. Zhang: *op. cit.*, p. 133.

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**Tytuł w języku polskim:** Nowy chiński kodeks cywilny i jego wpływ na zrównoważony rozwój

**Słowa kluczowe:** prawo cywilne, Chiny, zrównoważony rozwój, kodeks cywilny, prawo chińskie.

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THE NEW CHINESE CIVIL CODE AND ITS CONTRIBUTION  
TO SUSTAINABLE DEVELOPMENT

S u m m a r y

The first civil code of the People’s Republic of China in the history was adopted by the 13<sup>th</sup> National People’s Congress in Beijing on 28 May 2020 and will enter into effect on 1 January 2021. The new civil code puts much more emphasis on the sustainable development and protection of the environment and because of that, the Chinese private law has begun to respond to ecological problems as well. The aim of this article is to show the progress

and prospects of implementing Sustainable Development clauses to the civil law system of the People's Republic of China and to show how these solutions can become an inspiration for the development of Polish law in this matter. Legal comparative and normative analyses are methods which were used in this academic article to discuss and explain this problem.

**Keywords:** civil law, China, sustainable development, Chinese law, civil code.