

The Conditions and Limits for the Recognition of Environmental Rights as a Constitutional Right as an Emerging Right

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Abstract: *In recent years, there have been numerous academic discussions the environmental rights, and there has been ongoing debate about whether environmental rights can become a constitutional right and whether their focus is on the environment itself or on health. Although the current Constitution contains provisions on environmental protection, they do not appear in the form of fundamental rights. From a comparative law perspective, while international conventions tend to regard environmental rights as an international human right, most countries only partially recognize their claim-related attributes, often treating them more as a state objective. There is a close connection between environmental protection and the realization of health, but environmental protection has its own independent value. There is no doubt that environmental protection is a constitutional value, however, the constitutional environmental rights can only be claimed when they are closely related to health. In a risk-oriented society, the claim-related attributes, normative connotations, and scope of protection of the right to a healthy environment should be defined from three aspects: inviolability, risk prevention, and positive protection.*

Keywords: right to a healthy environment ♦ fundamental rights ♦ state protection ♦ risk prevention

In recent years, a series of discussions and debates have emerged surrounding environmental rights. Compared to traditional constitutional rights, environmental rights fall within the realm of emerging rights. At the constitutional level, the core of this debate lies in whether environmental rights can be recognized as a constitutional right. There is no doubt that environmental protection holds significant constitutional value, and there is a strong correlation between environmental protection and the realization of health. To a large extent, environmental protection relates to a healthy environment, and the right to a healthy environment is one of the core components of environmental rights. Constitutional texts also address this; for example, after the 2018 constitutional amendment, “ecological civilization” was incorporated into the Preamble of the *Constitution*. Article 26(1) of the *Constitution* stipulates that “The state shall protect and improve living environments and the ecological environment, and prevent and control pollution and other public hazards.” Thus, environmental protection, as a state objective clause, is of great significance for the realization of

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constitutional values. However, the constitutional text does not explicitly stipulate whether environmental rights or the right to a healthy environment can be considered fundamental rights in the constitutional sense, nor how they should be protected as fundamental rights. This necessitates an analysis of the constitutional attributes and constitutional value of environmental rights.

I. Debates Surrounding Emerging Rights Such as Environmental Rights

The determination of whether a right can be considered an emerging right hinges on two key aspects: First, whether it possesses the quality of being “emerging” — that is, whether it has newly arisen in response to societal and environmental changes; and second, whether it exhibits “novelty” — that is, whether it introduces new elements in terms of rights subjects, nature, and other aspects compared to traditional rights.¹ There is no doubt that the right to a healthy environment is an emerging right that has developed alongside societal progress, so it possesses the quality of being emerging. However, whether it possesses novelty is open to question. Constitutional rights differ from civil rights: Civil rights primarily guard against infringements by other private entities, whereas constitutional rights mainly protect against state violations or demand active protection from the state. For instance, the *Civil Code* stipulates that the right to health is a civil right, entitling any individual to claim protection against harm to their health from other individuals or private entities. Yet, whether the right to health can be recognized as a constitutional right, and whether it is necessary to establish a defensive right to health against state infringement, remains contentious.² The debate centers on whether the state could potentially infringe upon individuals’ health and whether the improvement of health requires the construction of a constitutional right to health, thereby deriving state’s positive obligations to protect and enhance citizens’ health. The construction of environmental rights faces similar challenges. In China, there is a general scholarly consensus that environmental protection should be normatively constructed from a constitutional perspective. However, considerable debate exists regarding the nature of environmental rights — specifically, whether they can be recognized as constitutional rights.³ Many scholars

¹ Yao Jianzong, “Outline of Emerging Rights,” *Law and Social Development* 2 (2010): 3-15.

² Li Guangde, “Typological Expansion of the Normative Positivization of the Right to Health,” *Human Rights* 4 (2021): 41-60.

³ Scholars holding this view include: Wu Weixing, “An Empirical Study on the Inclusion of Environmental Rights in the Constitution,” *Law Review* 1 (2008): 77-82; Zhang Zhen, “From Civil Environmental Rights to Constitutional Environmental Rights,” *Northern Legal Science* 2 (2008): 88-94; Chen Haisong, “Normative Interpretation of Constitutional Environmental Rights,” *Journal of Henan University (Social Science Edition)* 3 (2015): 1-7; Lyu Zhongmei, “Rationale and Proposal for the Inclusion of Environmental Rights in the Constitution,” *Law Science Magazine* 1 (2018): 23-40; Wang Kai, “The Development of Environmental Rights within the System of Fundamental Rights,” *Political Science and Law* 10 (2019): 17-30; Peng Feng, “On the Expression and Implementation of Environmental Rights in China’s Constitution,” *Political Science and Law* 10 (2019): 31-41. Scholars emphasizing a holistic interpretation of environmental provisions at the constitutional level include: Wang Jianxue, “Holistic Interpretation of Environmental Provisions After Ecological Civilization’s Inclusion in the

tend to define the constitutional attributes of environmental rights from the perspective of social rights.⁴

The core debates surrounding environmental rights are related to their emerging nature and rights attributes, which can be broken down into the following aspects:

A. Debates regarding the subject of rights

1. Individual right or collective right?

When discussing environmental rights, a core debate in the academic community revolves around whether the subject of such rights is the individual or the collective — that is, whether environmental rights are individual or collective in nature. In the field of environmental rights, some scholars argue that environmental rights should be regarded as individual rights, wherein each person is entitled to enjoy a healthy environment and can lodge claims against environmental damage caused by governments and corporations. This perspective emphasizes the individual's right to litigate.⁵ Another view holds that environmental rights are more collective in nature and cannot be adequately protected solely through individual rights. Environmental issues are trans-generational and global, and therefore, environmental rights should be considered as belonging to groups, or even to all of humanity or future generations.⁶

2. Does it protect future generations and non-human life?

Debates surrounding environmental rights also include whether such rights extend to the protection of future generations and non-human life. Some scholars contend that environmental rights should encompass the rights of the current generation and future generations, ensuring that they can inherit a sustainably developed planet. This proposition is reflected in international agreements such as the *United Nations Framework Convention on Climate Change*, though its specific legal application remains contentious. The German Federal Constitutional Court has explicitly stated in its rulings that the state bears a protective obligation toward future generations in matters of environmental protection.⁷ Another segment of scholars argues that other life forms in nature (such as plants, animals, and ecosystems) should also be recognized as subjects of environmental rights. They advocate that the law should acknowledge the role of these life forms in maintaining ecological balance and protect them from destruction by human activities. Article 20a of the German *Basic*

Constitution,” *Political Science and Law* 9 (2018): 68-79; Zhang Xiang and Duan Qin, “Environmental Protection as a ‘State Objective’ — The Doctrine and Implications of Article 20a of the Basic Law of the Federal Republic of Germany,” *Political Science and Law* 10 (2019): 2-16.

⁴ Wang Kai, “The Development of Environmental Rights within the System of Fundamental Rights,” 17-30.

⁵ P. Cullet, “Definition of an Environmental Right in a Human Rights Context,” *Netherlands Quarterly of Human Rights* 13 (1995): 25-28.

⁶ D. Shelton, “Human Rights, Environmental Rights, and the Right to Environment,” 28 *Stanford Journal of International Law* 1 (1991): 118; D. Shelton, “Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?,” 35 *Denver Journal of International Law and Policy* 1 (2006): 129-161.

⁷ Vgl., BVerfG, Klimabeschluss, Beschluss vom 24. März 2021, Az.: 1 BvR 2656/18; A. Müller and M. Wittwer, “Das Klimaschutzurteil des Bundesverfassungsgerichts: Verfassungsrechtliche Maßstäbe für Klimaschutz und Generationengerechtigkeit”, *Zeitschrift für Umweltrecht (ZUR)* 32, no.6 (2021): 301-312.

Law (Grundgesetz) pledges to safeguard “the natural foundations of life.” Yet the environment, portrayed as those foundations, remains contested terrain: Is it a prerogative reserved for human beings, or should it extend to every living organism? The content of “natural” protection is itself uncertain. Stripped of an anthropocentric lens, does the Earth’s environment truly need our guardianship, or does the planet already possess a self-healing ecology that merely ceases to suit human habitation once damage crosses a certain threshold — while remaining, for the Earth itself, perfectly “natural”?⁸

The debates regarding the subject of rights highlight the challenging position of environmental rights as a claimable right. If the subjects of environmental rights are collectives, or even the interests of future generations and non-human life, the realization of such claims faces numerous difficulties. If a right cannot be practically enforced, its status as a claimable right becomes questionable.

B. Debates regarding the nature of rights

1. Substantive right or procedural right

Another debate surrounding environmental rights concerns whether they are substantive rights or primarily characterized by procedural safeguards. Scholars who advocate for substantive environmental rights argue that such rights should grant individuals and groups the entitlement to a clean, safe, and sustainable environment. These rights include specific aspects such as pollution prevention, biodiversity conservation, and restrictions on greenhouse gas emissions. Other scholars contend that environmental rights are predominantly procedural, conferring upon the public the rights to participate in environmental decision-making, access information, and seek judicial redress. For instance, the *Aarhus Convention* explicitly stipulates the public’s right to participate in environmental matters and requires governments to provide transparent information during environmental decision-making processes. This perspective emphasizes achieving environmental justice through procedural safeguards, rather than granting the environment an independent substantive right.⁹

It is noteworthy that in France, although environmental rights are inscribed in the *2004 Charter for the Environment (Charte de l’environnement)*, which holds constitutional status, and are thus recognized as constitutional rights, to date, no ruling of unconstitutionality by the French Constitutional Council has been based on substantive environmental rights. Instead, decisions have predominantly relied on procedural environmental rights.¹⁰

2. Subjective right or objective law

Furthermore, there is debate over whether environmental rights should be regarded as subjective rights (i.e., claimable rights that individuals can invoke) or as principles of objective law. The distinction between subjective rights and objective

⁸ Vgl., Scholz, “Art. 20a”, *Maunz-Dürig, Grundgesetz Kommentar* (2009), S. 26.

⁹ A. Boyle, “Human Rights and the Environment: Where Next?,” 23 *European Journal of International Law* 3 (2012): 613-642; A. Boyle, “Human Rights or Environmental Rights? A Reassessment,” 18 *Fordham Environmental Law Review* 3 (2006): 471-517.

¹⁰ Wang Jianxue, “The Original Intent of Environmental Rights in Constitution-Making and Constitutional Review: Research and Reference Based on France’s Charter for the Environment,” *Journal of Human Rights Law* 3 (2022): 29.

law originates from German jurisprudence. The former, from the perspective of the subject, refers to the claim rights possessed by individuals, enabling them to demand action or inaction from obligated entities. The latter emphasizes the attributes of objective law, meaning that the provisions belong to the realm of objective legal norms and embody objective legal interests, regardless of whether they can be transformed into subjective rights.¹¹ In the context of constitutional law, this dichotomy manifests as the distinction between subjective public rights and the objective value order.

In the field of constitutional law, subjective public rights and the objective value order are not isolated; a fundamental right typically possesses both the attributes of a subjective public right and an objective value order. However, this is not the case for emerging rights such as environmental rights, where the attribute of being a subjective public right and that of an objective value order are not two sides of the same coin. For example, in Germany, an environmental fundamental right in the sense of a constitutional right was never intended to be constructed by the constitutional framers from the outset. In Germany, for example, a fundamental right to the environment in the constitutional sense was never what the framers set out to create. Environmental protection is classified as a state objective, not a fundamental right, and therefore cannot be reduced to a subjective claim that individuals can invoke for judicial relief.¹²

C. Debates surrounding the scope of protection of environmental rights

For environmental issues, the most challenging problem lies in determining to what extent environmental protection must be achieved to ensure better safeguarding of the environment. If the environment is considered a right, do environmental rights entail the realization of a “perfect environment”? How should a “perfect environment” be defined? Furthermore, what is the ultimate purpose of environmental protection? Is it to protect the environment itself, or is it ultimately to protect human health? If it is the latter, then environmental rights should be positioned as the right to a healthy environment. In essence, the scope of protection for environmental rights is considerably uncertain — it is unclear to what degree environmental protection goals must be realized to be considered achieved. Especially in the context of a risk society, where environmental risks are ubiquitous and their consequences unpredictable, the realization of environmental protection objectives becomes even more challenging.¹³

D. Discussions arising from conflicts of fundamental rights

Environmental protection must be considered within the inherent value system of the *Constitution*. In the process of environmental protection, conflicts of fundamental rights often arise, and various constitutional values are frequently in a state of constant balancing. Specifically, environmental rights often conflict with the

¹¹ Takashi Yamamoto, “Objective Law and Subjective Rights”, translated by Wang Guisong, *Law and Economy* 6 (2020): 98-111.

¹² Vgl., Scholz, “Art. 20a”, *Maunz-Dürig, Grundgesetz Kommentar* (2009), page 24; C. Siederer, *Der Umweltschutz als Staatsziel in Artikel 20a GG: Eine verfassungsrechtliche Analyse* (Nomos, 2010).

¹³ Vgl. H. Hofmann/H.-G. Henneke, eds., *GG Kommentar zum Grundgesetz*, 14th ed. (2018), S. 964f.

following fundamental rights:

1. Conflict between environmental rights and the right to development

The conflict between environmental rights and the right to development is a common issue worldwide. Many developing countries face difficult choices between economic development and environmental protection. On the one hand, the right to development is a fundamental right for developing countries to pursue economic growth and eliminate poverty; on the other hand, excessive economic exploitation often leads to severe environmental degradation, infringing upon the environmental rights of local communities and future generations. The theory of sustainable development has emerged as the mainstream doctrine for reconciling these two rights, emphasizing that economic development must occur within the framework of environmental protection. Some scholars argue that sustainable development can provide a middle path to resolve the conflict between environmental protection and economic development.¹⁴

2. Conflict between environmental rights and private property rights

Many environmental regulations and policies (such as restrictions on emissions and land use) may negatively impact private property rights. On the one hand, scholars supporting environmental rights argue that environmental protection should take precedence over the economic interests of individuals or corporations, particularly when public health and the conservation of natural resources are at stake. On the other hand, scholars advocating for the primacy of property rights contend that excessive environmental regulations may infringe upon corporate property rights and could even lead to legally unfair expropriation. For example, in 2011, the German government decided to phase out nuclear power plants. This decision was challenged by energy companies, which argued that it violated their property rights. The German Federal Constitutional Court explicitly stated in its ruling that the state, based on its obligation to protect the environment under Article 20a of the *Basic Law*, could prioritize environmental protection and public safety even if such measures imposed economic burdens on private enterprises.¹⁵

The above outlines the debates surrounding environmental rights. From these discussions, it is evident that there are numerous controversies regarding whether environmental rights can be established, who should hold these rights, and how they should be protected. To resolve these debates, it is first necessary to analyze the constitutional nature of environmental rights and explore whether and to what extent the constitutional value of environmental protection can be recognized as a fundamental constitutional right.

II. Conditions for Emerging Rights to Become Fundamental Rights in the *Constitution*

For a right to be recognized as a constitutional right, it must meet the following

¹⁴ Cao Wei, "Research on the Construction of Basic Principle Clauses in the Environmental Code," *China Legal Science* 6 (2022): 113-133.

¹⁵ BVerfGE 143 (246), page 246-396.

conditions: Either it is explicitly stipulated in the constitution, such as property rights or freedom of speech; or it is deeply rooted in a nation's traditions and culture, holding significant value for its people, or has been endowed with importance during societal transformations; these are referred to as unenumerated fundamental rights.¹⁶ The derivation and scope of unenumerated fundamental rights vary across countries. For instance, in the United States, marriage and privacy are considered unenumerated fundamental rights.¹⁷ From a comparative law perspective, whether it is the unenumerated fundamental rights in the United States or the "general freedom of action" (*allgemeine Handlungsfreiheit*) in Germany, which serves as a bottom-line fundamental right, they primarily pertain to privacy rights and the right to self-determination. Issues such as marriage, privacy, abortion, and gender autonomy are all manifestations of this right to self-determination.

At the constitutional level, if environmental rights are not explicitly designated as constitutional rights, they must be derived through interpretation. In China, although the *Constitution* explicitly addresses environmental protection, it does not do so in the form of a fundamental right. Therefore, the question arises: Can environmental rights be considered a fundamental right?

Deriving emerging rights as constitutional rights faces significant theoretical challenges. First, environmental rights resemble social rights in that they primarily demand active protection from the state rather than, like liberal rights, requiring the state to refrain from infringement. Whether social rights can be recognized as constitutional rights today remains highly contentious. For example, in Germany, a major change in the *Basic Law* (*Grundgesetz*) compared to the *Weimar Constitution* was the removal of numerous social rights provisions from the Weimar era, redefining the *Basic Law* as a fundamental order of liberal democracy. However, this does not mean that the *Basic Law* neglects social security and welfare provisions. Article 20 of the *Basic Law* establishes the "social state principle" (*Sozialstaatsprinzip*), through which Germany has built a comprehensive social welfare and security system, becoming a model of a "welfare state."¹⁸ The question arises: How does the "social state principle" in the *Basic Law* differ from the social rights in the *Weimar Constitution*? Why did the *Basic Law* cease to treat social rights as fundamental rights? The reason lies in the fact that, under the "social state principle," social security and welfare are primarily determined by the legislature through democratic legislation. If social rights were protected as fundamental rights, citizens could initiate constitutional review of relevant laws through constitutional litigation to assert their constitutional rights. However, social security and welfare are highly dependent on a country's fiscal conditions and involve complex fiscal allocation decisions, making them more suitable for resolution through democratic deliberation rather than constitutional adjudication by the Federal Constitutional Court. Moreover, social rights are highly subjective, as individuals have varying demands for subsistence

¹⁶ Tu Zhenyu, "Constitutional Protection of Unenumerated Fundamental Rights," *Peking University Law Journal* 1 (2007): 41-42.

¹⁷ Allan Ides, Christopher N. May, *Examples & Explanations for Constitutional Law: Individual Rights*, 5th edition, translated by Xiang Yan (Beijing: Commercial Press, 2014), 90-100.

¹⁸ Vgl., F. -X. Kaufmann, *Sozialpolitik und Sozialstaat: Soziologische Analyse*, 2002, S. 163ff.

guarantee, which inevitably leads to differing thresholds for claims. Excessive litigation over social rights could place an undue burden on state finances. If a right is consistently difficult to realize in practice, it becomes illusory, making a more pragmatic approach to protection preferable.¹⁹ Thus, the difficulty in recognizing social rights as constitutional rights lies in their nature as positive rights requiring active state provision. If individuals are granted claim rights, implementation challenges arise, and the extent of protection is better determined through democratic processes.

Rights that actively demand state protection generally take two distinct forms. The first involves claiming state provisions as a prerequisite for realizing liberal rights. For instance, the realization of citizens' right to education necessitates the state's active creation of educational prerequisites (such as establishing an education system and providing adequate teaching capacity). Citizens can demand that the state supply sufficient educational resources and ensure equal access to them — a concept known as the “right to share.” The second form directly demands state provision of welfare benefits and other forms of support, which aligns with the claim of social rights. Thus, benefit rights that require state provision consist of two categories: Primary benefit rights, which are direct claims for state provision, and derivative rights to share, which advocate for equality in state-provided benefits.²⁰

For such rights that demand active state provision, it is generally difficult to derive them from the overall constitutional framework if the constitutional text does not explicitly stipulate them. In other words, unenumerated fundamental rights should primarily be concentrated in the realm of liberal rights and individual self-determination, with limited extension to social rights. For example, China's current *Constitution* explicitly stipulates the “right to material assistance,” which demands active state provision. In the context of environmental protection, the greatest challenge to its recognition as a constitutional right lies in the fact that while environmental protection requires better improvement, the standard for “better” remains elusive. Similar to the right to subsistence, the realization of living conditions has no absolute “best” but only “better,” and individuals hold varying expectations of the minimum standards required for human dignity.²¹ The environment is a natural fact that gains significance only in relation to humans. For instance, rising global temperatures are an objective fact for the Earth, but for humanity, they translate into the global greenhouse effect. In other words, environmental improvement or degradation holds meaning only in relation to humans and Earth's biodiversity, thereby necessitating legal regulation.

If the environment is defined as a right and thus as a claimable right, the rights holder is naturally entitled to demand action or forbearance from the obligated entity.

¹⁹ On the distinction between social fundamental rights and state objectives, see K. Hesse, *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, 20th edition (1999), S. 91f.

²⁰ Volker Epping et al., *Fundamental Rights*, translated by Zhang Dongyang (Beijing: Peking University Press, 2023), 182.

²¹ Vgl., H. -J. Papier, *Unternehmen und Unternehmer in der verfassungsrechtlichen Ordnung der Wirtschaft*, *VVDStRL* 35 (1976), S. 82.

If environmental rights are regarded as constitutional rights,²² the subjects of fundamental rights (natural persons or legal entities) can make claims against the state, demanding its action or inaction. While it is reasonable for individuals to demand protection from harm by the state, can rights holders actively demand that the state achieve a “better” environment? If so, what are the limits and boundaries of the state’s obligation to provide active protection for its realization? The scope of such claims is difficult to define, and environmental protection often conflicts with other constitutional values, such as the frequent tension between environmental conservation and economic development. Consequently, many countries adopt a cautious stance toward recognizing environmental rights at the constitutional level.

Although Germany engaged in extensive discussions and some scholars advocated for the inclusion of environmental rights in the *Constitution* prior to the incorporation of environmental protection provisions, the German *Basic Law* ultimately adopted environmental protection as a “state objective” (Staatsziel) during its deliberations. This reflects a compromise. Historically, environmental protection as a state objective was never intended to be an individual’s directly claimable environmental fundamental right, but rather an objective constitutional principle within the realm of objective law. It cannot be equated with fundamental rights in the sense of subjective rights.²³ From the outset, environmental protection in Germany was not absolute, but a relative value requiring balancing within the inherent value network of the *Constitution*. “Article 20a of the *Basic Law* embodies the intrinsic constitutional balancing of environmental protection, tasked with achieving a proportional equilibrium between ecological state objectives and other legally protected interests equally enshrined in the *Constitution*.”²⁴

The United States and the vast majority of European countries adopt a similar approach, treating environmental protection as a state objective rather than a fundamental right. Only a few exceptions exist, such as France and Portugal. In France, the 2004 *Charter for the Environment* elevated environmental rights to the constitutional level, explicitly stating that every individual has the right to live in a healthy environment and meanwhile has the duty to protect it.²⁵ Similarly, Article 66 of the Portuguese *Constitution* stipulates the right to the environment, affirming that everyone is entitled to a healthy and ecologically balanced environment, and the state bears the responsibility to protect and improve environmental quality.²⁶

²² Constitutional rights differ from civil rights. Constitutional rights are directed against state power, where private individuals request state action or inaction, while civil rights are directed against other private entities. They differ in nature.

²³ Vgl., Scholz, “Art. 20a”, *Maunz-Dürig, Grundgesetz Kommentar* (2009), page 24.

²⁴ *Ibid.*, 37.

²⁵ Wang Jianxue, “The Constitutionalization of Environmental Protection in France and Its Implications: Focusing on the Relationship Between Environmental Public Interest and Environmental Human Rights,” *Jinan Journal (Philosophy and Social Science Edition)* 5 (2018): 62-71.

²⁶ Article 66(1) of the *Constitution of Portugal* stipulates that everyone has the right to a healthy and ecologically balanced human living environment and the duty to protect it. See the official website of the Printing Bureau of the Macao Special Administrative Region, accessed October 15, 2024, https://bo.io.gov.mo/bo/i/cn/crpen/crpp1t3_cn.asp#a66.

From a constitutional perspective, more rights do not necessarily equate to better rights.²⁷ Whether a right, particularly an emerging right, can be recognized as a constitutional or fundamental right depends primarily on explicit textual stipulation. Rights explicitly designated as fundamental in the constitution naturally qualify as such. It is the variation in textual provisions that leads to differences in how countries define the scope of fundamental rights. Second, in the absence of explicit textual stipulation, deriving fundamental rights requires a more cautious approach. In the United States, both academia and the practice of Supreme Court rulings have witnessed significant controversy over “unenumerated fundamental rights.” Different countries have varying approaches to whether unenumerated fundamental rights exist and which rights qualify as such, but most tend to focus on privacy rights with attributes of “self-determination.” The right to self-determination pertains to matters that an individual can decide autonomously within society — issues that belong solely to the individual and do not involve broader societal interests. It reflects the degree of “freedom” an individual enjoys within the state and society. Thus, whether in the case of unenumerated fundamental rights in the United States or the “general freedom of action” in Germany as a bottom-line fundamental right, the focus remains primarily on the domain of free development of personality under self-determination, rather than extending to areas where the scope and boundaries of rights are difficult to define or where implementation poses significant challenges, such as positive rights. Whether social rights, environmental rights, or health rights, they all require active state involvement, including direct provision and assistance. However, the extent and scope of state provision are difficult for individuals to seek through rights-based remedies and largely depend on national legislation. In other words, the realization of social welfare, environmental protection, and health is closely tied to state policies and finances, and policies in these areas evolve rapidly with societal development, allowing for significant flexibility for the space and scope of adjustment. They are more appropriately treated as state objectives and policies rather than as fundamental rights subject to legal remedy.

In essence, constitutional rights are primarily defensive in nature. As a claimable right, a constitutional right is directed against the state and demands that the state refrain from infringement. While its dimension of requiring the state to provide active aid and protection can, in principle, be transformed into a subjective fundamental right through the “re-subjectivization” of the state’s obligation to protect,²⁸ this transformation inevitably has its limits. Although environmental protection has defensive aspects, it predominantly requires active state protection. Therefore, recognizing environmental rights as constitutional rights is subject to certain conditions and limitations. Not all claims related to environmental protection can be asserted through rights-based approaches.

III. The Current State of Constitutional Protection of the

²⁷ Jiang Feng, “The Hidden Worries of Constitutionalizing Rights: Reflections Centered on Social Rights,” *Tsinghua Law Journal* 5 (2010): 51-63.

²⁸ Vgl., Pieroth/Schlink, *Grundrechte*, 24. Aufl., 2008, S. 21f.

Environment from a Comparative Law Perspective

Based on the above analysis, it is difficult to justify environmental protection as an unenumerated constitutional right. However, this does not mean that constitutional claims for environmental protection are absent within the framework of state objectives for environmental conservation.

As a constitutional value or legal interest, the environment encompasses multiple layers of constitutional requirements, and its scope of protection extends beyond what subjective public rights can cover. There is no doubt that environmental protection is a state objective established by the constitution — a constitutional value that includes not only aspects of subjective claim rights, but also obligations such as the state's obligation to protect, institutional safeguards, and organizational and procedural guarantees.

Broadly understood, environmental rights typically refer to the right to enjoy a healthy and sound environment, including the protection of natural resources such as clean air, water, and soil. This interpretation treats environmental rights as fundamental human rights for individuals, society, and even future generations. In a narrower sense, environmental rights focus more on pollution control and the maintenance of environmental quality, primarily involving the right to prevent environmental degradation, and avoid direct health or property damage caused by environmental destruction. As mentioned earlier, one of the core academic debates revolves around whether environmental rights should be recognized as independent fundamental rights or regarded as extensions of existing rights (such as the right to life, health, or property).

With the intensification of global challenges such as climate change and environmental pollution, the status of environmental rights in national constitutions and international law has been increasingly elevated. Discussions on environmental rights originated in the 1970s, and with the adoption of the *Stockholm Declaration* (1972) and the *Rio Declaration* (1992), an international consensus on environmental rights gradually emerged. Some scholars advocate for the inclusion of environmental rights in the international human rights framework,²⁹ arguing that a healthy environment is inseparable from human well-being.

European countries generally exhibit clearer recognition and protection of environmental rights. Many national constitutions, as well as the European Union's legal framework, incorporate provisions on environmental protection and elevate it to the level of rights protection. Although the *European Convention on Human Rights* does not explicitly mention "environmental rights," the European Court of Human Rights (ECHR) has expanded its interpretation to link environmental protection with other rights under the Convention (such as Article 2, the right to life, and Article 8, the right to private and family life), thereby providing a legal basis for the protection of environmental rights. Through numerous rulings, the ECHR has confirmed that environmental pollution may violate Article 8 if it adversely affects private life. If

²⁹ J. Knox, "Human Rights, Environmental Protection, and the Sustainable Development Goals," 24 *Washington International Law Journal* 3 (2015): 517-536.

pollution severely degrades residents' quality of life or disrupts their living environment, the court may find that the state has failed to fulfill its obligation to protect the right to private life. In cases of extreme pollution or ecological disasters, the court may also invoke Article 2 (right to life) to rule that the state has failed to safeguard the lives of its people.

The *Charter of Fundamental Rights of the European Union*, promulgated in 2000, serves as a key legal document for the protection of fundamental rights in EU member states. Article 37 specifically addresses "environmental protection," stating that "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development." Additionally, the EU has enacted a series of environmental protection directives, such as the *Environmental Liability Directive*, the *Water Framework Directive*, and the *Biodiversity Strategy for 2030*, to strengthen environmental conservation efforts. The *Aarhus Convention* establishes the public's rights to access environmental information, participate in decision-making, and seek legal remedies, significantly advancing the legal development of environmental rights. In practice, the ECHR, in the case of *Kyrtatos v. Greece* (2003), did not directly recognize environmental rights as independent rights but indicated that environmental issues could affect citizens' lives and health, potentially violating rights protected under the *European Convention on Human Rights*.³⁰ In *Fadeyeva v. Russia* (2005), the court ruled that pollution from a factory impacted residents' health, constituting a violation of Article 8 (right to private and family life).³¹

Germany has established environmental and animal protection as state objectives. Although this provision does not directly confer individual environmental rights, it reinforces the state's responsibility for environmental protection and provides a constitutional foundation for the formulation and implementation of environmental policies. In practice, the German Constitutional Court has indirectly protected environmental rights through expansive interpretations of existing fundamental rights, such as the right to life and physical integrity (Article 2(2) of the *Basic Law*).³² In its jurisprudence, the Federal Constitutional Court has interpreted that if environmental degradation endangers life and health, the state has a duty to take active measures to protect these rights of citizens. This must involve a triangular protective relationship among the responsible party for the damage, the affected party making sacrifices, and the state.³³

The United States has a stringent legal framework for environmental protection, but does not explicitly recognize environmental rights at the constitutional level. Environmental regulation is primarily achieved through federal laws such as the

³⁰ [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-61099%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-61099%22]), accessed October 15, 2024.

³¹ [https://hudoc.echr.coe.int/rus#%22itemid%22:\[%22001-69315%22\]](https://hudoc.echr.coe.int/rus#%22itemid%22:[%22001-69315%22]), accessed October 15, 2024.

³² Vgl., Scholz, "Art. 20a", *Maunz-Dürig, Grundgesetz Kommentar* (2009), page 11.

³³ Vgl. H. Hofmann/H.-G. Henneke, eds., *GG Kommentar zum Grundgesetz*, 14th ed. (2018), S. 964f, page 962.

National Environmental Policy Act (NEPA), the *Clean Air Act*, and the *Clean Water Act*. In *Massachusetts v. EPA* (2007)³⁴, the U.S. Supreme Court ruled that greenhouse gases qualify as pollutants under the *Clean Air Act* and that the Environmental Protection Agency (EPA) must regulate them. This case underscored the importance of environmental protection in U.S. law. In *Juliana v. United States*,³⁵ a group of young plaintiffs sued the U.S. government, arguing that its inaction on climate change violated citizens' right to a clean environment. Although the case faced procedural challenges, it raised the constitutional question of environmental rights.

From the above comparative analysis, it is evident that only a minority of countries have directly elevated environmental rights to constitutional rights. However, in most countries, environmental protection is recognized as a constitutional legal interest, either as a state objective or as an inherent constitutional value. In China, environmental protection is not stipulated as a fundamental right, but rather approximates a state objective, if Article 9 and Article 26 of the *Constitution* are coherently interpreted alongside Article 33(3)'s provision that "the state shall respect and protect human rights," it is natural to discern an implied fundamental environmental right within the state objective of environmental protection under Article 26. It is the high correlation between environmental protection and citizens' fundamental rights that necessitates the state's positive obligation to protect and improve the environment. From the perspective of current protection status, constitutional protection of the environment can be broadly categorized into three scenarios: Inviolability, the state's negative obligation to protect, and the state's positive obligation to protect. The first two scenarios fall under the category of non-violation. The distinction lies in the fact that the former directly guards against infringement by state power, while the latter involves state protection against violations by other private entities. The state's positive obligation to protect require the state to actively strive to improve the public's living and surviving environment. Each of these scenarios entails citizens' claim rights regarding the environment. Therefore, the state objective of environmental protection implicitly includes constitutional environmental rights to a certain extent. However, while the above distinctions may appear clear, they present certain problems. Specifically, there is no clear boundary between non-violation of environmental protection and its active improvement, particularly in the context of a risk society, where this issue becomes even more complex. This necessitates a discussion of constitutional environmental protection within the framework of a risk society.

IV. The Constitutional Realization of Environmental and Health

Rights in the Context of a Risk Society

A. New challenges for environmental protection and health realization in a risk society

³⁴ *Massachusetts v. EPA*, 549 U.S. (2007), page 25-30.

³⁵ Comment on: 947 F. 3d 1159 (9th Cir. 2020), *Harvard Law Review* 134 (1929).

Modern society is a risk society.³⁶ The most defining characteristic of a risk society is the uncertainty of risks and the pervasive presence of risks stemming from human decisions. So-called risks refer to the potential for future losses arising from decisions made today. In Niklas Luhmann's view, every decision, regardless of its nature, entails risk.³⁷ To prevent the occurrence of detrimental outcomes, preventive measures must be taken in advance — this is the risk prevention principle. However, the problem posed by risk prevention is that the measures taken to avert unknown damages may hinder economic, technological, and other forms of development. Moreover, risk prevention measures might themselves give rise to greater risks.

Within a risk society, the ecological environment faces various unpredictable risks, such as environmental protection issues stemming from population growth and economic development. The risk society presents new challenges and introduces a new protection paradigm for the realization of environmental rights. This new paradigm is most evident in the application of the risk prevention principle.

The risk prevention principle originated in German *Environmental Law* but is not limited to the environmental domain; it also applies to the management of public health and technological risks. This principle first emerged in German environmental legislation of the 1970s, particularly in the *Federal Emission Control Act* and the *Federal Water Act*. The risk prevention principle in the EU originated from environmental protection legislation in the early 1980s and was formally integrated into the EU legal framework after the 1992 *Maastricht Treaty*. This is specifically reflected in several key EU documents, such as Article 191 of the *Treaty on the Functioning of the European Union* (TFEU), which outlines the objectives and principles of environmental protection and explicitly requires the EU to adhere to the risk prevention principle when formulating environmental policies. This provision states that in cases of serious or irreversible potential environmental damage, risk prevention measures should be taken even in the absence of full scientific data.

The application of the risk prevention principle is subject to certain conditions, which can be summarized as follows: (1) Scientific Uncertainty: When scientific research has not yet reached conclusive findings regarding a particular risk, risk prevention measures should be considered. (2) Severity of Potential Risk: If the potential risk poses significant or irreversible harm to the environment or public health, relevant authorities have the right and obligation to take preventive measures. (3) Reasonable Risk Assessment: Despite scientific uncertainty, risk assessments should be based on available scientific data, considering the proportionality and effectiveness of the measures to be taken.

When prevention becomes a legal requirement,³⁸ it is necessary to determine under what circumstances prevention is required, what preventive measures should be

³⁶ Ulrich Beck, *Risk Society: Towards a New Modernity*, translated by Zhang Wenjie and He Bowen (Nanjing: Yilin Press, 2018), 25-26.

³⁷ Vgl., N. Luhmann, *Soziologie des Risikos*, Walter de Gruyter 1991, S. 25ff.

³⁸ Whether prevention becomes a legal principle remains controversial at the international level. See J. Sanden, "Das Vorsorgeprinzip im europäischen und deutschen Umweltrecht — Weiterentwicklung und Impulse für das internationale Recht", *Osaka University Law Review*, 53, S. 247-252.

taken, the extent of prevention, and liability for insufficient prevention. From the perspective of a risk society, risks arise primarily due to the pervasiveness of risks, uncertainty about the future, and the limitations of human knowledge. Prevention primarily addresses risk scenarios characterized by complexity, unknown consequences, and unclear causality³⁹ — situations where the causes and effects cannot be scientifically confirmed. Both the EU and Germany have established the risk prevention principle at the legal level and developed its normative connotations through three aspects: (1) Risks are typified according to their probability, thereby calibrating the level of precaution.⁴⁰ This classification relies on the “state of technology” and the “state of knowledge” to establish likelihood, distinguishing among hazards, risks, and residual risks as separate regulatory tiers. (2) The importance of the protected legal interest matters: The more vital the legal interest, the lower the probability of harm required to trigger risk prevention measures.⁴¹ (3) Because causation in risk contexts is hard to prove, the law demands no rigid scientific demonstration; adequate “correlation” suffices, and the burden of proof is reversed in establishing causality.⁴²

In the United States, while there is no principle explicitly termed the “risk prevention principle” as in the European Union, the US legal system implicitly incorporates similar preventive approaches in areas such as environmental protection, public health, and consumer safety. When addressing potential risks with scientific uncertainty, the United States tends to adopt legal and policy approaches that rely more on risk assessment-based protection mechanisms rather than the broad and systematic application of the risk prevention principle as seen in the European Union. Compared to the European Union, the US approach places greater emphasis on science-based risk assessment. US laws often require rigorous scientific analysis of risks before taking action, particularly to demonstrate that a specific activity or product poses an actual danger to the environment or public health. Unlike the European Union, the United States is less likely to adopt preventive measures in the absence of fully demonstrated risks, instead prioritizing scientific data and cost-benefit analysis. Nevertheless, US environmental laws, public health laws, and related fields still contain legal provisions and case law that resemble the risk prevention principle. Relevant U.S. statutes typically require regulatory agencies to take action to protect the public or the environment when potential risks are identified, especially in the face of significant harm. For example, the case of *Ethyl Corp. v. EPA* (1976)⁴³ exemplifies the application of a precautionary approach. This case involved the Environmental Protection Agency (EPA) banning the gasoline additive tetraethyl

³⁹ Oliver Lepsius, “Risk Regulation Through Administrative Law: Promotion or Limitation of Innovation?,” in *Risk Regulation: German Theory and Practice*, translated by Li Zhongxia, edited by Liu Gang (Beijing: Law Press·China, 2012), 204.

⁴⁰ Europe and Germany have inconsistencies in classification; for example, Europe adopts a trichotomy while Germany uses a dichotomy. *Ibid.*, 180.

⁴¹ J. Sanden, “Das Vorsorgeprinzip im europäischen und deutschen Umweltrecht — Weiterentwicklung und Impulse für das internationale Recht”, 260.

⁴² Vgl., C. Calliess, Vorsorgeprinzip und Beweislastverteilung im Verwaltungsrecht, *DVBl* 2001, S. 1725-1733.

⁴³ *Ethyl Corp. v. EPA*, 541 F. 2d 1 (D. C. Cir. 1976).

lead. Based on provisions in the *Clean Air Act*, the EPA argued that the additive posed a potential serious risk to public health, even though there was no complete scientific consensus on the specific health effects of lead at the time. The US Court of Appeals for the District of Columbia upheld the EPA's decision, ruling that the agency had the authority to take preventive measures based on potential health risks, even in the absence of conclusive scientific evidence. The court held that the need to protect public health could take precedence over scientific certainty, particularly when significant uncertainties existed. This case is regarded as a classic example in U.S. law that aligns closely with the risk prevention principle, emphasizing the government's responsibility to take preventive action in the face of scientific uncertainty.

Although the United States has adopted practices similar to the risk prevention principle in certain areas, its application faces several challenges in the country. First, there is a strong reliance on scientific evidence. Compared to those of the European Union, US decision-making processes depend more heavily on scientific evidence. In many fields, preventive measures are taken only when sufficient scientific research indicates a clear risk. Second, the influence of economic interests plays a significant role. U.S. policymaking is often influenced by economic interest groups. In many instances, preventive measures face strong opposition from powerful lobbies, which to some extent undermines the applicability of the risk prevention principle. Third, the US legal structure imposes limitations. Decision-making in the United States must undergo strict scrutiny through legislative or judicial channels. This makes it more difficult for policymakers to adopt broad preventive actions similar to those in the European Union, particularly in situations of scientific uncertainty.

B. The three tiers of environmental rights in a risk society

In modern society, the environment exhibits typical risk attributes. To define constitutional environmental protection, it is necessary to incorporate a risk perspective. As discussed earlier, environmental protection in the constitutional context is primarily a state objective clause rather than a fundamental rights clause. However, this does not mean that constitutional environmental rights cannot be derived from the state objective of environmental protection. The issue may not lie in whether constitutional environmental rights can be established, but rather in the sense and extent to which they are recognized and how they should be realized.

Overall, the provisions on environmental protection in China's *Constitution* should be regarded as state objective clauses, yet these clauses also encompass claim rights. From the perspective of the characteristics of environmental protection, the state objective of environmental protection in the *Constitution* comprises three tiers, each containing specific claim rights. Correspondingly, across these different tiers, the subjects of these claim rights, the scope of protection, and the degree of protection vary.

1. Environmental health as the inviolable core: guarding against actual hazards

Within the state objective of environmental protection lies a minimum constitutional requirement of inviolability — that is, environmental protection

possesses an inviolable core value, which constitutes its essential core of value. In this sense, environmental rights as defensive rights can be justified. Here, it is necessary to define the scope of protection for environmental rights as defensive rights.

For environmental protection, the quality of the environment — whether good or bad — only gains significance when linked to human beings. Therefore, the inviolable core of the environment must be defined in connection with human health and survival. The core value of environmental protection should be environmental health. In this context, environmental rights are not established in the sense of demanding a better environment, but rather in the sense that environmental damage must be sufficient to cause irreparable harm to human health. At a practical level, direct state infringement on public environment and health through legislation or other means is rare in modern society. Thus, the claim of constitutional environmental rights is not primarily about demanding that the state refrain from direct infringement, but about “prohibiting insufficient protection.”⁴⁴ For instance, if the state fails to establish sufficiently stringent standards (such as wastewater discharge standards), leading to environmental degradation and consequent harm to human health, constitutional review of such standards can be requested. In this regard, environmental rights in the defensive sense are closely linked to health rights. At this level, the subject of the claim for right to a healthy environment should be the individual, and such claims can only be asserted when environmental damage directly results in harm to an individual’s health.

At the level of defensive rights, environmental rights require scientific certainty — that is, science must sufficiently demonstrate that environmental damage can directly harm citizens’ health. Therefore, the formulation of environmental and health standards must be supported by reliable scientific assessments and expert demonstration. In this sense, the public’s right to participate in decision-making and access information regarding environmental health protection must be safeguarded. Environmental rights in the procedural sense can also be established here.

2. The right to request risk prevention in the environmental domain

In situations where science cannot yet conclusively prove that a risk will cause harm, whether the public can request the government to assume responsibility for risk prevention remains complex. Generally, in the realm of risks, the decision of whether and to what extent to adopt preventive measures should primarily be determined by legislation rather than granting the public a claim right. However, in China, laws such as the *Food Safety Law*, the *Water Pollution Prevention and Control Law*, and the newly drafted *Ecological and Environment Code* all emphasize “prevention as the priority.”⁴⁵ From this perspective, there remains room for the existence of claim

⁴⁴ Vgl., Scholz, “Art. 20a”, *Maunz-Dürig, Grundgesetz Kommentar* (2009), page 35.

⁴⁵ Article 3 of the *Water Pollution Prevention and Control Law* stipulates: “In the prevention and control of water pollution, we shall follow the principles of giving priority to prevention, combining prevention with control and preventing and controlling in an all-round way, protect drinking water sources first, rigorously control industrial pollution and urban domestic pollution, prevent and control agricultural non-point pollution, vigorously promote the construction of ecological management projects, and prevent, control and reduce water pollution and ecological damage”. Article 3 of the *Food Safety Law* stipulates: “Food safety work shall implement

rights regarding environmental protection at the level of risk prevention.

The right to request risk prevention in the environmental domain primarily manifests in the following aspects:

(1) Right to request risk monitoring

In the environmental field, competent authorities should conduct regular risk monitoring to promptly identify potential risks. This requires the state to establish a comprehensive risk monitoring mechanism in the realm of environmental health to prevent potential adverse situations. For example, laws such as the *Food Safety Law* (Articles 14-16) and the *Water Pollution Prevention and Control Law* (Articles 23-26) stipulate risk monitoring mechanisms. The draft *Ecological and Environment Code* (Article 22) also includes corresponding provisions. If the risk monitoring mechanism is absent or operates ineffectively as required by law, the public should have the right to request the establishment of a robust risk monitoring mechanism.

(2) Right to request risk assessment

Risk monitoring alone is not enough; the competent authorities must also carry out regular risk assessments. In fields such as the environment, pharmaceuticals, and food, risks are constantly changing. Therefore, on the basis of monitoring, a periodic risk-assessment mechanism should be established. Article 447 of the draft *Ecological and Environmental Code* sets out a detailed system for soil-contamination risk-assessment reports. A right to request such assessments will enable the public to press the government to put in place sound risk-assessment mechanisms in relevant areas; indeed, the risk-assessment system runs through the entire draft Code.

(3) Right to request risk information

The public should have the right to be informed about relevant risks. Risk assessments in relevant fields should be conducted periodically and regularly disclosed to the public. Even in areas where scientific certainty is lacking, if unpredictable risks exist, the public should be notified. For instance, in many environmental protection contexts, risks may be unknown — whether they will cause harm or the extent of potential damage remains uncertain — but the public should still have the right to know about such risks. Only with such a right to information can the public make rational autonomous choices, among other actions.

(4) Right to request risk prevention

Even in areas where risks are scientifically uncertain, if they touch upon the core interests of the public in the environmental domain, the public should be granted the right to request that the government or competent authorities actively adopt risk prevention measures. For example, in the field of nuclear energy, although there is scientific uncertainty regarding the extent of risks associated with nuclear power, the state should implement all possible risk prevention measures to avert catastrophic outcomes. This also implies that if potential risks are excessively grave — meaning their realization would lead to unbearable consequences — the state must fulfill its

“prevention as priority, risk management, full process control and joint governance by the public”, and shall establish a scientific and stringent supervision and administration system”. Article 6 of the draft *Ecological and Environment Code* stipulates: “Ecological and environment protection shall adhere to the principles of prevention first, systematic management, giving priority to ecology, green development, public participation, and damage accountability”.

comprehensive risk prevention responsibilities. Meanwhile, if the consequences of potential risks are not overly severe, they may fall into the category of “residual risks,” where the state is not obligated to exercise strict risk prevention diligence. Therefore, at this level, scientific understanding of risk assessment and evaluation of the severity of potential risks are crucial. The state may only avoid legal obligations for risk prevention if the risks in question are scientifically uncertain and the potential harm remains within publicly acceptable limits. Otherwise, the extent of the state’s preventive obligations should be determined based on the magnitude of potential risk damage.

3. The right to request active protection of the environment

Regarding the active protection of the environment and health, the purpose is not to guard against dangers or risks but to take measures to improve the environment — a mechanism for enhancement. Article 26(1) of China’s *Constitution* states that “The state shall protect and improve living environments and the ecological environment, and prevent and control pollution and other public hazards.” Within the state objective of environmental protection, in addition to preservation, there is also a requirement for active improvement. However, such improvement should depend on state policy, and how and to what extent it is achieved should primarily be determined through democratic legislation. In this regard, it seems unnecessary for the public to establish a claim mechanism at this level. Yet, the unique aspect of the environment lies in the blurred boundary between damage and improvement. In some cases, failure to improve may even constitute damage. The environment is an intergenerational right; if the current generation does not strive to improve it, the environment for future generations may deteriorate. Although some actions may not directly make the environment worse, without active measures for improvement, the overall environment could decline — carbon emissions serve as a prime example.

It is at this level that a positive right seems necessary — a right allowing the public to demand that the state take active steps to improve the environment. This derives from the state’s positive obligation to protect, itself generated by the constitutional objective of environmental protection. The active realization of ecological and environmental protection must be understood within the framework of conflicts between fundamental rights and constitutional values. The enhancement of environmental protection standards must align with a country’s level of socioeconomic development. While pursuing economic growth, environmental protection standards should be continuously raised. Generally, environmental claim rights at the level of active protection can only be asserted based on the principle of proportionality, and are applicable only in limited circumstances where economic development has significantly advanced while environmental protection levels remain noticeably low. This is because such a right should be a collective right rather than an individual claim. In determining the “limited circumstances” for activating the right to request active protection, the principle of proportionality plays a crucial role. When legislative or administrative measures clearly fail to meet the minimum requirements for environmental improvement, citizens may lodge active requests demanding that the state fulfill its obligation to enhance the environment.

Conclusion

Although environmental protection is stipulated as a state objective clause in the *Constitution*, this does not mean that constitutional environmental rights do not exist. The justification for constitutional environmental rights ultimately lies in their intrinsic connection to human health — it is only within the framework of safeguarding health that environmental rights can be substantiated. Constitutional right to a healthy environment must be asserted across three tiers: Inviolability, risk prevention, and active protection. At the level of inviolability, the purpose of environmental protection is to prevent harm to human health caused by environmental degradation. In the context of risk prevention, environmental protection remains closely tied to human health, with the extent of protection determined by the magnitude of risks and balanced against the affected legal interests. The greater the risk and the deeper the impact on legal interests, the greater the state's obligation to undertake risk prevention measures. At the level of active protection, the constitutional value of the environment can, to some extent, exist independently of immediate health concerns. Environmental improvement may not directly correlate with current health benefits, but holds significant importance for future generations. In this regard, it retains independent value as a claim right.

(Translated by *CHEN Feng*)