suffered direct losses as a consequence of the pollution. That rule also provided for strict liability of the tortfeasor, as the only chance for the polluter to exempt himself from liability was to prove that the environmental pollution losses were the consequence of natural disasters that could not be averted even after the prompt adoption of reasonable measures.

Liability for environmental pollution was in any case already provided for by other rules, such as Article 124 GPCL,\(^37\) for damages caused to others in violation of state provisions for environmental protection and the prevention of pollution, and by some special laws, such as the 1984 Law of the People's Republic of China on the Prevention and Control of Water Pollution,\(^38\) the 1995 Law on Prevention and Control of Environmental Pollution by Solid Waste,\(^39\) and the 2000 Law on Prevention and Control of Atmospheric Pollution.\(^40\)

Although all the rules mentioned above follow paths that are familiar to civil law scholars, it should be noted that nonetheless those paths sometimes significantly diverge on important issues, as in the case of Article 67 of the CTL, which states that "if the environment is polluted by two or more persons, the degree of liability shall be determined by factors including, inter alia, the type of pollutants and the quantity emitted".\(^41\) Therefore, the special rules on environmental damage of the CTL provide that where harm is caused by environmental pollution, if it is caused by multiple tortfeasors, each of them shall be severally liable for the damages caused, proportionally to their share of liability.

It is important to underline that this rule not only differs from the general joint and several liability of multiple tortfeasors provided for cases of damages by environmental pollution in civil law systems, but that it also contradicts the same Chinese general rules, as the provisions from Article 8 onwards of the CTL explicitly provide, in cases of multiple tortfeasors, for their joint and


\(^{38}\) Zhonghua Renmin Gongheguo Shui Wuquan Fangzhi Fa (2008 xuding) [Water Pollution Prevention and Control Law of the People's Republic of China (2008 Revision)] (promulgated by the Standing Committee of the National People's Congress, 28 February 2008).


several liability, and this rule already applied before by virtue of the general rule of Article 130 GPCL.\textsuperscript{42}

This different, more favourable treatment of those multiple tortfeasors who engaged in polluting activities, who are only asked to pay for their share of damages, while all other multiple tortfeasors are obliged to pay for the whole of the damages, coupled with the less advantageous treatment of victims of environmental damages, who may be left uncompensated or undercompensated, when some of the polluters are unable to pay the compensation or no longer exist, may be interpreted as a signal of the actual intentions of the Chinese legislator.

On the other hand, it should also not be forgotten that the new version of the above-mentioned Environmental Protection Law, which came into force in 2015, not only strengthens companies’ and individuals’ liability for preventing and controlling pollution, provides for more severe punishments in cases of violation and gives more responsibilities to local governments in the control and enforcement of environmental protection rules, but also tries to empower the victims of environmental damages, providing, at Article 58, that registered groups engaged in environmental protection can qualify as plaintiffs in public interest litigation against polluting activities. That rule, at first sight, appears to be a duplicate of the provisions contained in Article 55 of the Code of Civil Procedure of 2012, which already set out the possibility of making use of public interest litigation, \textit{inter alia}, in cases of environmental pollution.

The will of the Chinese government to make the best use of those procedural rules was reaffirmed with the enactment, on 6 January 2015, of the Supreme People’s Court Interpretation on Several Issues Regarding the Application of Law in Public Interest Environmental Civil Litigation, which tries to facilitate access to public interest litigation in environmental civil cases, permitting certain NGOs to file a case in a court different from the local court where the pollution occurred; enabling injured private parties to take advantage of the NGO’s action and reducing the costs of the litigation; providing that the damages paid by the polluters are to be put in a pool of money, which should be used to compensate all the injured parties; requiring the control of the settlements of the cases, to avoid that the settlement is the consequence of intimidation of the petitioners by the polluter or the local government; and, lastly, putting the onus on the polluter to prove all the information concerning the pollution and providing that the same courts can investigate the facts of the case and allow the hearing of experts.\textsuperscript{43}

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\textsuperscript{42} Zhōnghuá Rénmín Gònghéguó Mínfā Tōngzé (中华人民共和国民法通则) [General Principles of the Civil Law of the People’s Republic of China] (promulgated by the National People’s Congress, 12 April 1986, effective 27 August 2009).

\textsuperscript{43} For some preliminary information on the issue, see Y. Zhao, Innovative measures to improve environmental law enforcement in China, China-EU Law J. 2015 (4), p. 155.
Taking into account all this febrile legislative activity, we can certainly affirm that the Chinese legal system is endowed with every useful tool, as long as it concerns positive rules, inspired by civil law models and institutions, to provide satisfying compensation to the victims of the damages caused by environmental pollution. The issue is whether and how those rules are actually transplanted into Chinese legal system.

4. APPLICATION OF THE RULES ON THE COMPENSATION OF ENVIRONMENTAL DAMAGE

Although China’s legal system possesses all the necessary laws, written following civil law models, on the compensation of damages caused by environmental pollution, the application of those rules to actual cases is unfortunately not so straightforward and successful as the Chinese legislator certainly would have wished. In truth, the compensation of damage caused by environmental pollution, which represents a major problem in the Chinese fight against pollution, may represent a good example that the road of legal transplants may be paved with many cultural and social obstacles.

First of all, it cannot be denied that, compared to the large volume of polluting activities in China, and therefore the very likely large number of cases of damages resulting from environmental pollution, the glittering legal rules are seldom put in action, although there has been some increase in the number of cases that have come before the courts.

The reason for this limited number of cases apparently has its roots in the Chinese society and the anthropocentric Confucian belief that man should exploit nature to his own advantage. This attitude has entailed a tradition of an antagonistic relationship between man and nature, which was more recently also adopted by Mao and still permeates Chinese society. For this reason, in China environmental damage is often probably not considered compensable damage.44

Moreover, Chinese people traditionally prefer to have recourse to non-judicial methods of resolution, rather than to judicial procedures. Therefore, positive legal rules are rarely applied to cases of damage caused by environmental pollution, because in these cases the compensation to the victims of the environmental pollution, if any, is generally acknowledged on the basis of extra-legal rules. The wide popularity of non-judicial methods of resolution in China is coupled with the array of different procedures, as we can distinguish between conciliation, mediation and xinfâng procedures.

Conciliation may occur between the litigants before or during administrative or judicial proceedings. The first kind is considered extra-judicial, and therefore the agreement does not need to be approved by any authority, whereas an agreement reached during the administrative or judicial proceedings does need to be approved by the same administrative or judicial body. Some scholars have underlined that the lack of external bindings on the outcome of the conciliation and the disparities in the bargaining powers of the parties are often the cause of the unfavourable results of conciliation procedures for the victims of environmental damages.

Conciliation procedures are in any case very much surpassed in numerical terms by the widespread traditional system of mediation, which is led by mediators, whose task is to help the parties to freely achieve a reasonable settlement. As the mediation procedures are endowed with authority, the final settlement is enforceable on the parties. Three types of mediation can be distinguished – people's mediation, administrative mediation and judicial mediation – depending on the authority charged with the mediator role.

A large number of mediation procedures are so-called "people's mediations", led by persons without administrative or judicial functions, generally the People's Mediation Committees of the Residents' Committees in urban areas or of the Villager's Committees in rural areas. The outcome of these mediation procedures cannot be modified or repudiated, but can only be disputed in court, and performance can be enforced by the People's Courts.

Recourse to people's mediation is common in certain environmental damages compensation cases – such as nuisance caused by manufacturers, small or communal enterprises, solely owned workshops and stalls – and is mainly confined to poor and less educated people in the countryside and

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45 Under Article 51 of the Civil Procedure Law: Zhōnghuá Rénmín Gāngghéguó Minshí Súshì Fǎ (Shixíng) (中华人民共和国民事诉讼法(试行) [Civil Procedure Law of the People's Republic of China (For Trial Implementation)]) (promulgated by the Standing Committee of the National People's Congress, 8 March 1982).

46 Supreme People's Court interpretation of the Civil Procedure Law (1992), Article 191.

small towns. Although the mediators should in theory resolve civil disputes in accordance with the law, that is not always the case, and in many cases the agreement may reflect the limited legal abilities of the mediator, the application of highly sensitive criteria, the existence of incentives to mediate the case instead of fighting it before a court and sometimes even the personal power and social position of the litigants. Notwithstanding their legal shortcomings, the Chinese government apparently strongly supports the use of people's mediations, because they may reinforce its power and control over the people and reduce litigation costs.

Administrative mediation is instead performed by administrative bodies, and is generally very efficient and respectful of the legal reasons of the parties, because administrative bodies usually have good knowledge of and expertise in the subject of the dispute.

Lastly, judicial mediation has a long tradition in China, as it has been practiced in Chinese civil courts since the late 1930s and was formally institutionalised in 1982 in the Civil Procedure Law of the People's Republic of China. Judicial mediation consists in the settlement of cases by voluntary agreements between the parties, before or during the trial; these agreements must comply with the law.

Today judicial mediation is often used by the parties in a dispute, also because the policies of the Chinese Supreme Court place great emphasis on its use, even evaluating judges on the basis of the percentage of mediations they conduct in comparison with their overall caseload. Moreover, apparently, the same judges believe that mediation is their primary duty before adjudication, encouraging

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49 Civil Procedure Law: Zhōngguó Rénmín Gònghéguó Mínshì Shú shì Fá (Shixíng) (中华人民共和国民事诉讼法(试行) [Civil Procedure Law of the People's Republic of China (For Trial Implementation)]) (promulgated by the Standing Committee of the National People's Congress, 8 March 1982), Article 16.

50 Zhao, supra, note 47 at pp. 162–164.


55 Civil Procedure Law: Zhōngguó Rénmín Gònghéguó Mínshì Shú shì Fá (Shixíng) (中华人民共和国民事诉讼法(试行) [Civil Procedure Law of the People's Republic of China (For Trial Implementation)]) (promulgated by the Standing Committee of the National People's Congress, 8 March 1982).
its use by the parties, when not actually imposing it.\textsuperscript{56} Unfortunately, the superimposition of the role of mediator and judge in the same person is often troubling, as it may entail substantial injustices and be used by lay judges to avoid applying to difficult cases rules they do not know well enough, such as those on the damage caused by environmental exposure.\textsuperscript{57}

The Chinese government is certainly conscious of these problems, as well as of the fact that the widespread recourse to judicial mediation may easily interfere with the application of positive laws on the compensation of environmental pollution. For that reason, the Chinese government, for a short period following the Court Reform Five-Year Plan commencing in 1999, successfully limited the number of judicial mediation cases, especially in large coastal cities and urban courts, promoting judicial efficiency and justice by improving judges’ professionalism and carrying out procedural justice reform. Unfortunately, for reasons still debated by scholars,\textsuperscript{58} soon afterwards the Chinese government promptly reversed this attitude, and since the early 2000s, the number of judicial mediation procedures has risen again, with the inevitable negative consequences. It cannot in fact be denied that judicial mediations may affect judges’ decisions and their handling of cases, and therefore the implementation of positive rules, including those providing the compensation of environmental damages.\textsuperscript{59}

Lastly, we should not forget to mention the extensive recourse to another procedure, namely xinfāng, equally widely used in China. Xinfāng is a traditional instrument of redress, consisting in a petition in front of petition-level bodies, called xinfāng bureaus, which exist outside formal legal institutions but at the same time are formally established. Xinfāng bureaus can be found in almost all Chinese government bodies, including courts, local government offices, and Party committees.\textsuperscript{60} It is very important to underline that these bureaus are empowered by the Chinese Communist Party and its individual officials, and can take decisions even against court decisions, which are therefore delegitimised by the use of xinfāng. In some cases, judges are obliged, by provincial regulations to hear xinfāng petitions, overlapping their functions.\textsuperscript{61}

\textsuperscript{56} C. Minzer, China’s Turn Against Law, Am. J. Comp. L. 2011 (59/4), pp. 935, 959.
\textsuperscript{57} Zhao, supra, note 47 at pp. 170–175.
\textsuperscript{58} For the different opinions of the scholars on the issue, see Minzer, supra, note 56 at p. 397; Cullen & Huating, supra, note 54 at pp. 39–40; B. Liebman, A Populist Threat to China’s Courts?, in M.Y.K. Woo & M.E. Gallagher (eds.), Civil Dispute Resolution in Contemporary China, Cambridge University Press, 2011, pp. 269, 303–306.
The Chinese government makes extensive use of xinfāng as a multipurpose political governance tool, even in cases of environmental damage, because it is extremely sensitive to populist pressure as a consequence of the political concerns about social stability. For their part, Chinese people equally very often make use of xinfāng petitions, either because they have no confidence in the independence and impartiality of the judicial system or because they want to influence it since, as we said above, xinfāng petitions can be filed even against court decisions. In truth, scholars have pointed out that courts may also be extremely sensitive to populist pressures because of the strain put on them by the government and the fears of social stability. Therefore, it is apparently not uncommon for the courts to agree to change their decisions, rehear the case, ignore the letter of the law or consider cases without any legal basis, because of the significant pressures put on judges.

Moreover, it should not be forgotten that traditionally Chinese people are more accustomed to petitioning practices and xinfāng bureaus than to pleading before a court, even if today simultaneous recourse to both remedies is not uncommon. The inevitable consequence of this situation is the limitation of the number of cases, included those related to the compensation of environmental damage, that are brought before the courts.

The second problem in the application of the rules provided for cases of environmental damages is equally linked to another cultural and social factor, related to the interpretation and application of the provisions of the law. In fact, contrary to civil law systems, where the provisions of the law generally have an immediate prescriptive meaning, in China laws are generally considered to be policy statements and declarations of intents that need to be implemented by other legal rules and regulations. Furthermore, definitions of the legal terms can sometimes be not as clear as they should, causing difficulties in the application of some legal terms. This situation is probably rooted in tradition, as the Chinese guidelines for legislative drafters, approved by Mao in the 1950s, dictate that primary legislation should be both “general” and “flexible”, following the idea that general and flexible national legislation can best be implemented throughout the country and be adapted to local conditions. In truth, it should

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62 Id. at p. 107; Liebman, supra, note 58 at p. 306.
also not be forgotten that general and flexible legislation also best enables political control, leaving a wide scope for policy in the hands of the Chinese Communist Party. In any case, the direct consequence of these characteristics of generality and flexibility is an actual lack of independence of the laws from political directives and Chinese bureaucracy.68

Good examples of these issues can be found in some cases of compensation of environmental pollution.69

A first example is that of the application of the rule of strict liability, clearly provided for, as mentioned above, by Article 41 of the former version of the Environmental Protection Law. Under that rule, polluters could be held liable for damages when (even lawfully) they discharged wastewater or emitted air pollutants or caused other environmental pollution, if it was proved that such (even lawful) acts caused any harm.70 That rule, in fact, was not interpreted and applied as a strict liability rule by some courts and administrative bodies, which instead preferred to support the idea that the discharge of polluters in compliance with the permit limits or state standards was not a basis for civil liability, even where environmental harm was caused.71

In the end, that same provisions of that rule were reaffirmed by several different legal acts72 and lastly by Articles 65 and 66 of the new version of the CGL over the course of 20 years. That proves to us the difficulties in implementing concepts such as strict liability for environmental damage.

In fact, it is still quite common for Chinese courts in environmental liability cases to require the petitioners to prove the liability of the defendants, with the inevitable and frequent consequence of the claimants' petition being dismissed because of the impossibility of proving the defendants' responsibility, either


under the negligence or the causal profile. In these cases, to prove the liability of the defendants is therefore almost impossible, especially considering the difficulties in showing the existence of a causal link between the pollution and the damage, because of the costs of doing so and in some cases the practical impossibility.

Nevertheless, on some occasions the Chinese courts have applied the strict liability rule to cases of damages caused by environmental pollution. Apparently, in fact, the principle of strict liability of the defendants in cases of environmental damages is slowly creeping into Chinese courts, as we can see from the reports of some Chinese cases. Probably one of the first was Sun Youli et al. v. Qianan Diyi Zaozichichang et al.,\textsuperscript{74} which concerned damages to fish and shellfish farmers caused by the death of fish and shellfish as a consequence of the discharge of an excessive amount of wastewater from nine pulp factories and chemical plants. In that case, all the tortfeasors were held liable for the compensation of the damages, including the one that had complied with the legal limits on waste, although this latter was not held jointly and severally liable with the other defendants for the damage.

That brings us to the point of the joint and several liability of the tortfeasors in cases of environmental damages. The principle of joint and several liability is usually adopted by civil law systems in cases of damage caused by environmental pollution consequent to the illicit actions of multiple tortfeasors, because it clearly offers better protection to the victims, granting compensation for the damage suffered even when one or more of the tortfeasors no longer exist or cannot pay for their share of compensation. In my opinion, it is really interesting that the principle of joint and several liability of multiple tortfeasors was adopted by Chinese law as a general principle, with Article 130 GPCL, but not for cases of environmental damage, since Article 67 CTL explicitly provides for several liability of multiple defendants. Although that choice may have its rationale in the presumption that the polluters do not have a joint intent and that the pollution is caused by independent acts, certainly the choice does not favour the victims of environmental pollution. In any case, that same rule may certainly please Chinese judges who, before the enactment of the new Article 67 CTL, and therefore under the general rule of joint and several liability, have held, in cases of environmental damages, with different reasoning, multiple tortfeasors to be severally liable.\textsuperscript{75}

\textsuperscript{73} See for example the cases Zhang Changjian et al. v. Pingnan Rongping Chemical Plant (Pingnan Intern. People's Court, April 2005); Zhang Changjian et al. v. Pingnan Rongping Chemical Plant (Fujian Provincial High People's Court, November 2005); on these decisions see A. Wang, The Role of Law in Environmental Protection in China: Recent Developments, Vt. J. Envtl. L. 2006–2007 (8), pp. 192, 214. On the issue Wang, supra, note 61 at p. 205; Stern, supra, note 69.

\textsuperscript{74} Sun Youli et al. v. Qianan Diyi Zaozichichang et al., Hebei Court, 2002 and 2003.

\textsuperscript{75} Zhao, supra, note 47 at pp. 179–185.
5. FINAL REMARKS

The reason the author has chosen to use the word “remarks” instead of the word “conclusion” clearly lies in the fact that we do not think to have at our disposal enough sources – especially cases but also scholarly writing – to enable us to express a clear opinion on the actual impact of the transplant in China of civil law rules concerning the liability for the compensation of personal damages caused by environmental pollution.

Therefore, the author’s observations are to be considered tentative, as they are only supported by a limited amount of research materials and only concern the narrow boundaries of the present field of research.

In the author’s opinion it cannot be denied that the “mechanical” transplant into Chinese laws of provisions aimed at compensating the damages caused by environmental pollution that are modelled on civil law rules was successful. In fact, the existing Chinese laws provide all the necessary tools to compensate the victims of environmental damage, tools which have already proved to be generally suitable for their purpose in civil law countries.

By contrast, if we measure the success of the same transplants in terms of their capacity to shape the Chinese legal system according to civil law legal principles and therefore actually being able to compensate the victims of environmental damage, on the basis of the shortcomings that emerged from this research, the judgment cannot be very positive.

First of all, this is because the outcome of the effects of applying the rules providing for the legal compensation of environmental damages certainly suffers from the limited number of cases where these rules have actually been applied. In fact, the wide recourse to non-judicial remedies by Chinese victims largely hinders the efficacy of the legislative tools, reducing the number of legal decisions and therefore their capacity to affirm the legal principles and influence other cases. As long as judicial cases on the compensation of environmental damages are far and few between, their influence not only on the legal system, but also on the industrial system and society in general, will be hugely limited. Moreover, the authority of the courts will be restricted by their limited influence capacities. This is not to mention the fact that non-judicial decisions do not generally apply legal rules, and are easily influenced by the often significantly different bargaining powers of the parties.

Secondly, the uncertainties and reluctance in the application of the provisions of the laws on the compensation of environmental damages certainly undermine the authority of Chinese judges. In the author’s opinion, in fact, only when the courts are able to independently pronounce and interpret – without any temptation to accommodate the words of the laws to the needs of one of the parties, generally the defendants, or to continue to pay deference to legal traditions that are contrary to the laws’ aims – will the victims of environmental damages be able to trust them and will the courts be able to establish strong and
uniform case law. Unfortunately, the attachment to traditional attitudes, which often entails a disregard for the victims of environmental damages in favour of the tortfeasors, also sometimes shapes the choices of the legislator.

From what has been presented above, it is easy to infer that the impairments in the transplantation of civil law models of compensation of environmental damages in China probably mostly depends on the attitude of the government toward those issues. This attitude may perhaps be better described as “swinging”, as the Chinese government at the same time enacts strict rules on the compensation of environmental damages and does not give the courts all the powers they need to implement these rules, or affirms that it wants all the victims to be restored regarding the damage they suffered and then provides for the several liability of the multiple tortfeasors of environmental pollution.

Certainly, we should never forget that the Chinese government is constantly fighting against local governments and the fear of social unrest. The powerful local governments, which generally directly finance local courts and therefore easily influence their decisions, may in fact often be opposed to the policies of the central government, because they may be shareholders of the polluting industries, or those same polluting industries may be their principal taxpayers. And the fear of social unrest may lead the central government to favour non-judicial systems of dispute resolution, because they are easier to accommodate to political needs than court decisions and the central government probably fears the possible outcomes of an independent judicial system in certain sensitive fields.

On the other hand, the fight for a “beautiful China” undertaken by President Xi Jinping should not be undervalued. Indeed, we may consider that the enactment of the revised version of the Environmental Protection Law, which entered into force from 1 January 2015, was probably a first step towards a new approach by the government to Chinese environmental problems, environmental damages compensation among them. Apart from strengthening companies’ and individuals’ liabilities for preventing and controlling pollution

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and providing for more severe punishments in the case of violations, the new rules in fact give more responsibilities to local governments regarding the control and enforcement of environmental protection rules and empower the courts to establish a system of environmental public interest litigation.78

As mentioned above, the importance of this latter point was shortly afterwards emphasised by the issuing of the Interpretation on Several Issues Regarding the Application of Law in Public Interest Environmental Civil Litigation79 by the Supreme People’s Court on 6 January 2015. The facilitation of the access to court decisions in environmental damages compensation cases using the tool of public litigation could in fact provide a viable solution to some of the issues highlighted above, as the new rules allow NGOs to file cases in a court different from the local court where the pollution occurred, enable the victims of the pollution to take advantage of the NGO’s actions without costs, clearly state that the polluter must provide all the required evidence, permit the courts to investigate the facts and hear experts, and require the control of the settlements of the cases, with the purpose of avoiding that the decisions of the courts being the consequence of the intimidation of the petitioners by the polluter or the local government.

The Chinese Supreme Court also published, on 3 July 2017, a document called “Ten Model Cases regarding Environmental Public Interest Litigation”,80 with the clear intent of showing the achievements of the public interest litigation tool in cases of environmental damage, while providing examples of successful cases and promoting its usage in other cases.

The aim pursued by the Chinese government is today, therefore, clear: there is certainly a strong political will to actually implement liability rules modelled on civil law for cases of damage caused by environmental pollution. As the efforts needed to successfully implement those rules mainly concern, in the author’s opinion, cultural and political factors, considering the recent attempts of the Chinese government we will most probably soon be able to judge whether “beautiful China” will also be populated by “compensated victims”.

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78 For a critical approach to the 2015 changes, see T. Liu, China’s Revision to the Environmental Protection Law: Challenges to Public Interest Litigation and Solutions for Increasing Public Participation and Transparency, J. Energy & Environ. L., Spring 2015 (60).

