

Current Situation of the Consultation System on Compensation for Ecological Environmental Damages and Paths to Relief

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Keywords: Ecological damage; consultation system; ecological restoration

Abstract: Focusing on the current state of development of the consultation system for compensation for ecological and environmental damages in China, this paper provides an overview of the establishment and implementation of the system, detailing its theoretical foundations, principles, and nature, as well as the challenges and problems encountered in practice. The study discusses various views on the legal nature of consultation agreements, explores the process of the practical application of the system, and proposes improvements to its development. The importance of this innovative system in ecological damage relief is emphasised, highlighting its value in facilitating the timely restoration of damaged ecosystems, improving the efficiency of compensation and enhancing awareness of ecological protection. Finally, suggestions are made for future research directions and the need for continued exploration and innovation in order to better serve ecological protection.

1. Introduction

In 2015, the General Office of the CPC Central Committee and the General Office of the State Council issued the Pilot Programme for the Reform of the Compensation System for Ecological and Environmental Damages (hereinafter referred to as the Pilot Programme), which initially carried out the pilot work of the consultation system for the compensation of ecological and environmental damages in individual provinces, and the consultation system for the compensation of ecological and environmental damages in China has gradually been established. However, despite the achievements of the system in recent years, problems such as deficiencies in the legislative provisions, unclear definition of the timing of consultations, and the narrow scope of compensation rights holders still deserve our attention.

2. Theoretical basis of the consultative system for compensation for ecological and environmental damage

The consultative system for compensation for damage to the ecological environment means that after damage to the ecological environment has been inflicted, the party responsible for causing the damage and the damaged party shall, by way of negotiation, determine the responsibility for compensation, the amount of compensation, etc., and reach a consensus on the mode of

compensation, so as to achieve compensation for damage to the ecological environment and its restoration. The core of the system is to bring compensation for damage to the ecological environment under the rule of law by means of equal, voluntary and legitimate consultation, so as to ensure that the damaged ecological environment is restored in a timely manner and effectively compensated.

In practice, the principles of the ecological environment damage compensation consultation system are as follows: the principle of legality, requiring local departments to carry out the consultation process of ecological environment damage compensation must be based on the law, from the easy to the difficult, steady and orderly work, the formulation of local laws and regulations should be based on the national situation, from the actual situation of the locality, and do not go beyond the supreme law; secondly, the principle of independent responsibility, that is, when a person is liable to pay compensation because of the same kind of Secondly, the principle of independent responsibility, that is, the compensation obligor because of the same ecological environment damage and need to bear administrative responsibility or criminal liability, will not affect the compensation obligor for ecological environment damage compensation responsibility of the lawful performance; Thirdly, the principle of initiative, the relevant departments in the regulatory activities of the existence of ecological environment damage found in the fact that the right to compensation, the compensation should be proactive to start the damage investigation, appraisal and assessment, restoration of the programme to prepare the procedure, and actively with the compensation obligor Consultation, as far as possible to recover losses; Fourth, the principle of openness, for the consultation process involves the public interest in the major matters related to information, the government and its functional departments should be timely disclosure, and actively accept public supervision. ^[1]

The implementation of these measures has effectively ensured that the basic principles of the consultative system for compensation for damage to the ecological environment are implemented. At the same time, they have also provided a more just and transparent compensation mechanism for damaged parties and promoted the protection and sustainable development of the ecological environment.

The definition of the legal nature of the consultation on compensation for ecological and environmental damage is a prerequisite for the establishment and improvement of the consultation system on compensation for ecological and environmental damage, and after the introduction of the Pilot Programme, there has not yet been any law or normative document in China that clearly stipulates the nature of the consultation on compensation for ecological and environmental damage. The legal nature of ecological environment damage compensation consultation agreement exists in the academic community of administrative agreement, dual-order construction, civil agreement and other three kinds of claims. ^[2]

Administrative agreement. Scholars who hold the "administrative agreement" that the consultation agreement is a kind of administrative agreement, the main reason is that the legal status of the subject of the consultation is not equal, is not a relationship of rights and obligations between equal subjects. Ecological environment damage compensation consultation agreement is recognised as an administrative agreement for three specific reasons. Firstly, the scholar Liu Qiaoer thinks that the process of initiating consultation is unilaterally controlled by the administrative organ, and the whole consultation agreement is dominated by it, so it should be regarded as an administrative agreement. ^[3] Secondly, consultation is the use of administrative power to achieve environmental management objectives, even if it involves the nature of private law, does not change its public power administrative attributes, so the consultation agreement formed in the environmental management activities should be regarded as an administrative agreement. Finally, the consultation agreement is in line with the provisions of the Supreme People's Court on the trial of administrative

agreement cases, which specifies four elements for recognising administrative agreements.

(a) Civil agreement theory. Scholar Li Xingyu believes that when the injured party files a claim against the aggrieved party, the two parties have already separated from the role of administrative supervisors and transformed into individuals who participate in civil activities on an equal footing. Therefore, the agreement reached in this case should be regarded as part of the civil contract. ^[4] Scholars Luo Li and Wang Yuxun point out that in this kind of negotiation process, government agencies appear as ordinary civil entities, and they represent equal dialogue and free communication between the state and citizens, aiming to achieve the goal of safeguarding the public interest in the ecological environment. ^[5]

(b) The two-order construction. The "two-order construction theory" proposes a classification of negotiation mechanisms for compensation for environmental damage. On the one hand, government departments are regarded as administrative agencies in the study of compensation for ecological damage, and the act of formulating and evaluating restoration plans is regarded as an administrative activity under the public statute; on the other hand, the signing of negotiation agreements and the process of implementing them are regulated by private law and regulations. On the other hand, the process of signing and implementing the consultation agreement is governed by private laws and regulations, in which the government department establishes a civil law link with the liable party. ^[6]

3. Practical exploration of a consultative system for compensation for ecological and environmental damage

Since the implementation of the consultative system for compensation for ecological and environmental damage, localities have actively explored and practised, and have continued to innovate and improve. According to statistics, by the end of 2021, the country has handled a total of about 11,300 cases of compensation for damage to the ecological environment, involving a compensation amount of more than 11.7 billion yuan, and the damaged ecological environment has been effectively repaired. ^[7] These practice cases not only provide valuable experience for the consultation system of compensation for ecological environmental damage, but also provide strong support for the further development of the system.

However, in the course of practice, the consultation system for compensation for ecological and environmental damages also faces some challenges and problems. For example, in some places, there are problems such as low compensation amounts, inefficient consultations, and inadequate restoration and compensation measures in practice. In response to these problems, localities are also actively exploring and practising, continuously improving and optimizing the compensation consultation model and process.

At the end of 2017, the General Office of the Central Committee of the Communist Party of China (CPC) and the General Office of the State Council jointly issued the Reform Program of the Compensation System for Ecological Environmental Damage (hereinafter referred to as the "Reform Program"). The Reform Program grants a certain degree of autonomy to localities, and the local application of the Reform Program can be adapted and applied in accordance with local specificities. On the one hand, this avoids rigidity in the implementation of the Reform Program at the local level, but on the other hand, it also gives rise to a situation in which the implementation of the Reform Program at the local level is characterized by mixed results and fragmented approaches.

The legislative provisions are deficient. According to the provisions of the Reform Programme, there are only three specific matters - i.e., the fact, scope and type of damage - that can be resolved by the parties through consultation. However, in the Regulations on the Administration of Compensation for Damages to the Ecological Environment issued by the Ministry of Ecology and Environment in 2022, this section was deleted and replaced with the "Restoration Programme".

Although many local regulations follow the framework set out in the Reform Programme, the actual operation is diverse, such as: remediation methods, assessment of remediation results, implementation plans, amount of compensation, etc., which makes the consultation workflow more complicated. As a result, the central and local authorities have not reached a unified view on the issue of compensation consultation, which has directly led to a great limitation on the application of the compensation consultation mechanism in practice. Given that the issues involved in the process of consultation on reparations can be decided by mutual agreement, it is also necessary to handle the division of relevant issues with great care. However, since there are differences in the existing issues, in order to meet the needs of practice, we can make use of the administrative characteristics of the compensation consultation system to repeatedly review the issues of consultation and to organise and classify them.

The timing of consultations on compensation for ecological damage is not clearly defined. It is difficult to decide when to open consultations to address ecological damage. While opening a dialogue too early can, to a certain extent, buy more time to stop the deep pollution of enterprises, it may also lead to disputes. Conversely, delaying consultation may allow environmental problems to worsen, thus making subsequent environmental restoration work more difficult. In addition, as identification is costly and time-consuming, if all aggrieved parties decide to wait until after the lengthy identification process, they are likely to miss the most appropriate time for consultation. According to ten classic cases, in practice, the consultation usually begins after the identification process has been completed. In many cases, the victim will work out an agreement on amendments or compensation on his or her own before an initial agreement has been reached.^[8] In such cases, if consultations are initiated too late, they may not only have an impact on the efficiency of ecological restoration, but may also lead to inequality in the relationship between rights holders and duty bearers, which is not favourable to reaching a consultative agreement.

The narrow scope of the right to reparation. The Reform Programme promotes the use of provincial and municipal administrations established under the authority of the State as compensation rights holders. Undoubtedly, these provincial and municipal governments occupy a prominent position in the role of the rightful owner of reparations, and, as explained above, they possess a wealth of environmental data and information, and are able to quickly mobilise the forces of all parties to deal with incidents of ecological damage in a coordinated manner. In addition, this advantage is reflected in the fact that provincial and municipal governments are able to directly create locally adapted and regionally specific regulations and policies to regulate environmental protection, thus facilitating the smooth operation of the compensation negotiation process and ecological damage restoration work. However, relying on the provincial or municipal government as the authority for compensation has the following shortcomings: first, due to the complexity and persistence of ecological damage cases, the government must be fully focused on these issues, and these two levels of local government are faced with heavy tasks and responsibilities every day, and their human and material resources are limited, so relying solely on them to carry out their ecological protection duties inevitably leads to excessive pressure. Secondly, limiting the right to compensation to a single level may reduce the effectiveness of case handling. In practice, some cases may be handled by subordinate county governments, however, since counties do not have the authority to act as the rightful owner of compensation, they can only wait until they have been harmed before reporting the situation to a higher level of government, which then assigns them to begin the recovery process. This cumbersome process of transferring reporting not only reduces the effectiveness of ecological restoration, but may also lead to environmental damage continuing to spread at this stage. As a whole, the existing claimant group is relatively small and unable to meet the actual needs, which undoubtedly undermines the original advantages of the aforementioned individuals. Therefore, we must expand the scope of claimants according to the specific situation.

4. Improvement of the consultative system for compensation for ecological and environmental damage

Strengthening legislation on the consultation system. Legislative improvements need to be made in a number of ways. Firstly, the main body responsible for compensation should be clarified, and a mechanism for accountability should be established to ensure that the responsibility for compensation is effectively implemented. Secondly, the compensation standard system should be improved, taking into account the type, degree, scope and repair cost of ecological environment damage and other factors, and formulate scientific and reasonable compensation standards. In addition, a technical system for identification and assessment of ecological environment damage should be established to provide technical support and guarantee for compensation consultation and restoration work. At the same time, supervision and management and law enforcement should be strengthened to crack down on illegal acts and ensure the authority and effectiveness of the system. In the process of improving the legislation, it is possible to learn from international experience, introduce advanced concepts and technologies, and at the same time innovate and improve them in the light of the actual situation. By continuously optimising and improving the consultation system for compensation for ecological environmental damage, the ecological environment can be effectively protected and sustainable development promoted.

Early initiation of consultation mechanisms. In practice, when ecological damage occurs, the injured party often gives priority to research, identification and evaluation in order to establish the truth. However, as environmental issues involve many factors such as complexity, suddenness and diversity, and the process of identification is cumbersome, time-consuming and costly. If consultation is not initiated until all the identification and assessment have been completed, the contamination may be further exacerbated, and the most opportune time for environmental restoration may then be missed, making it more difficult and costly. Therefore, it may be possible to communicate moderately in advance. As long as the basic situation has been clarified and the responsible parties have been locked in, even if the damage to the ecological environment has not yet been thoroughly clarified, an attempt can be made to open consultations. Before a preliminary consensus is reached, a professional appraisal team can be invited as a third-party participant to assist in the appraisal work. By building a parallel process, we can ensure that the consultation is conducted in a fair and reasonable manner while ensuring efficiency.

Broadening the scope of compensation rights holders. The Ministry of Ecology and Environment, as a specialised department that coordinates national ecological and environmental protection work, has on the one hand a team of professionals and supporting institutions and facilities in the field of ecological and environmental protection, and on the other hand has a wide range of ecological and environmental protection and governance experience to draw on. Therefore, the Ministry of Ecology and Environment and the local government can be included as the compensation right holder, so that the synergies between the departments, the integration of the strengths of the batch, the integration of the rule of law and professional power to form a synergy. In addition, given that cases of ecological and environmental damage mainly occur in suburban and township areas, it may be advisable to include county and district governments in the management of compensation rights holders, thus realizing the decentralization of power to the grassroots level. One can reduce the provincial and municipal governments to combat ecological and environmental damage work pressure, but also can play the advantages of the district and county governments of the front-line work, reduce the information gap, improve work efficiency.

5. Conclusion

The system of consultation on compensation for ecological environmental damage provides an

effective means of solving the problem of compensation for ecological environmental damage and helps to repair the damaged ecological environment in a timely manner. Through the consultation on compensation for ecological environment damage, the relevant responsible parties can participate more actively in ecological environment repair, thus speeding up the repair process and reducing the further deterioration of the ecological environment. Secondly, the system helps to improve the efficiency of ecological environment damage compensation. The traditional litigation method is long and costly, while the ecological environment damage compensation consultation system can quickly reach a compensation agreement through the negotiation between the two sides, and improve the efficiency of compensation. According to relevant data, the use of ecological environment damage compensation consultation system can shorten the compensation cycle, save a lot of human, material and financial resources. Finally, the system provides a useful exploration for the construction of the rule of law in China's ecological environment. Ecological environment damage compensation consultation system is an important part of China's ecological environment rule of law construction, its successful practice will provide valuable experience for China's ecological environment rule of law construction.

In conclusion, the future research direction of the consultation system of ecological environmental damage compensation is diversified and complex, which requires us to explore and innovate in practice in order to better serve the cause of ecological environmental protection.

References

- [1] China.gov.cn. General Office of the Central Committee of the Communist Party of China General Office of the State Council Issues Reform Programme for the Compensation System for Ecological Damage to the Environment_Related Documents of the Central Government_China.gov.cn (www.gov.cn)
- [2] Chen Junyu, Xu Lanbo. The Nature Definition and Judicial Effect of Consultation Agreements on Compensation for Ecological Environmental Damages [J]. *Contemporary Law*, 2022, 36(06):68-78.
- [3] Liu Qiaoer. Theoretical Basis and Legal Status of Ecological Environment Damage Compensation Consultation[J]. *Journal of Poyang Lake*, 2018(01):99-105+127-128.
- [4] Li Xingyu. Nature identification and system shaping of ecological environment damage compensation consultation [J]. *Journal of China University of Geosciences (Social Science Edition)*, 2019, 19(04):44-56. DOI:10.16493/j.cnki.42-1627/c.2019.04.005.
- [5] Luo Li, Wang Yuxun. Research on key issues in the interface between consultation and litigation of ecological environmental damage compensation [J]. *Journal of Wuhan University of Technology (Social Science Edition)*, 2017, 30(03):122-127.
- [6] Liu Li, Hu Pan. Interpretative theory of double-order construction of ecological environment damage compensation consultation system [J]. *Journal of Gansu Institute of Politics and Law*, 2019(01):37-46.
- [7] China.gov.cn. Reform of compensation system for ecological and environmental damages achieves remarkable results_Scrolling News_China.gov.cn (www.gov.cn)
- [8] Top 10 Classic Cases of the Second Consultation on Compensation for Ecological Damages. W020211227585496616654.pdf (mee.gov.cn)