

Research on the Application of Punitive Damages for Environmental Torts

Yijie Zhang*

Northwest Normal University, Lanzhou 73000, Gansu, China

hermione_zyj@163.com

*Corresponding Author

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Abstract: The Civil Code stipulates the punitive compensation system for environmental torts, but because there are ambiguities in the expression of the subject of the claim, constituent elements, legal effects, etc., it needs to be further explained. The subject of the claim of this system should be the victim of private interests and the plaintiff of public interest, the subjective element is "intentional + gross negligence", and the result element is causing serious personal and property damage and ecological environment damage. Under the guidance of the principle of "excessive punishment is equivalent", judges should exercise their discretion and use the base multiple method to determine the amount of compensation, hoping to maximize the system's punishment and warning functions to protect environmental interests.

1. Introduction

On May 28, 2020, the epoch-making Civil Code was adopted through the deliberations of the Third Session of the 13th National People's Congress. The Civil Code provides in Article 1,232 of Chapter 7 of the Tort Liability Part that "Where an infringer intentionally pollutes the environment or damages the ecology in violation of the law, causing serious consequences, the infringer shall have the right to claim corresponding punitive damages." Once this law was passed, the academic community immediately launched a lively discussion on the following issues: first, whether the "tortfeasor" refers to the subject of private or public interest litigation? Second, how to interpret "intentional", "serious consequences" and "corresponding" in the constitutive elements? Third, what is the difference between punitive damages and criminal fines and administrative fines? How should it be calculated? In order to clarify the application of punitive damages for environmental infringement and to better protect environmental rights and interests, this paper analyzes the above issues.

2. Confirmation of the Subject of Punitive Damages for Environmental Tort

2.1. Review of the Current Discussion on the Punitive Subject of Environmental Tort in Chinese Academia

The scholars, represented by Wang Liming, believe that punitive damages are not applicable to environmental public interest litigation, but only to cases where private interests have suffered damage [1]. This view is that punitive damages are mainly applicable to personal and property damages, and the judges have already applied the virtual cost management method to the ecological restoration with punitive nature, and there is a risk of incompatibility between punitive damages and ecological damages. At the same time, from the interpretation of the text, there is no "tortfeasor" in public interest litigation; from the interpretation of the system, punitive damages are provided before public interest litigation, which is against the legislative logic of "filling compensation first and then punitive damages". Therefore, the subject who has the right to file punitive damages for environmental infringement can only be the subject of private interest litigation, and it is not appropriate for the subject of public interest litigation to initiate relevant litigation.

In contrast, scholars represented by Liang Yong and Li Huaqi believe that although the legislation does not explicitly mention the application of punitive damages, the legislative background and process of Article 123 of the Civil Code is still aimed at the protection of the ecological environment, so punitive damages for environmental torts should be applied to the ecological damage, and the introduction of punitive damages in environmental public interest litigation is necessary. It is necessary to introduce the punitive damages system in the environmental public interest litigation [2].

Among the above two viewpoints, the first viewpoint is limited by the limitation of traditional theory, and has not paid attention to the problem of ecological environment infringement, which is different from general infringement cases. The main form of infringement is that the perpetrator directly destroys the natural environment, and transmits the infringement to people through the medium of the ecological environment; the consequences of the infringement include not only damage to the person, property, and even spirit of others, but also environmental and biological elements caused by environmental pollution. The unfavorable changes in the ecosystem will lead to the degradation of ecosystem functions, that is, the damage of environmental public interests [3]. Since the victims of private interests do not bear the burden of proving the damage to public interests and do not enjoy the legal status of receiving compensation, it is difficult to confirm their eligibility. Therefore, the second view is more in line with the confirmation of the subject of environmental punitive compensation and is more conducive to the protection of ecological rights and interests.

2.2. The Subject of Punitive Damages for Environmental Torts Should be Separated from the Public and Private

As far as the concept of "environmental damage" is concerned, it includes two aspects of "personal and property damage" and "ecological damage", that is, the duality of environmental damage consequences. [4] Ecological environmental damage refers to the damage to the ecological environment itself, which is paralleled with personal and property damage. [5] Environmental damage incidents are different from general civil tort incidents. In practice, the status of both the perpetrator and the victim in an environmental damage case is unequal in reality. The damage results also have the characteristics of indirectness and long-term, coupled with the public nature of ecological and environmental interests. Therefore, damages cannot be arbitrarily brought by plaintiffs in environmental private interest lawsuits. In view of this, in the case of ecological and environmental infringement, "personal and property damage" is filed by the subject of private interest litigation, while "ecological damage" is filed by the subject of public interest litigation. In other words, the subject of punitive damages for environmental infringement should be separated from public and private, that is, the victims of private interests and the plaintiffs of public interest litigation.

3. Analysis of some Elements of Punitive Damages for Environmental Torts

3.1. The Subjective Fault Condition should be "Intentional + Gross Negligence"

China has long adopted the principle of no-fault liability for environmental torts, and the environmental civil public interest litigation also follows this principle. As an exception to environmental tort, punitive damages can only be applied to subjectively malicious behaviors, that is, there must be intentionality. However, in the specific practice, as one of the forms of fault "gross negligence" because it can foresee but did not foresee or has foreseen but believe that the damage can be avoided, and did not fulfill the obligation to protect the environment and take effective measures, whether it should bear the environmental tort punitive damages should be included in the scope of consideration.

Some scholars believe that although gross negligence still belongs to the category of negligence, its subjective viciousness is very similar to that of intentionality, and both show the perpetrator's disregard for other people's lives, property and environmental protection. [6]Some scholars believe

that in view of the green principle and the frequency and severity of environmental pollution and ecological damage cases, the subjective element of "gross negligence" should be applied in environmental tort punitive compensation cases. [7]Article 6 of China's Environmental Protection Law clearly stipulates that both units and individuals have the obligation to protect the environment, which indicates that if there is gross negligence, they also need to bear the corresponding compensation liability.

Therefore, in order to fully remedy the damage and reflect the negative evaluation of the tortfeasor's illegal behavior, in addition to the subjective element of the "intentional" situation, if there is gross negligence, it should also bear the corresponding legal liability. At the same time, the judge can use discretion to make a distinction between the amount of compensation for gross negligence and intentional cases.

3.2. The Elements of the Result should be Causing Serious Personal and Property Damage and Damage to the Ecological Environment

From the perspective of legislative history, from the Civil Code (Draft for Public Comments) to the Civil Code, the result element of punitive damages for environmental tort is finally determined from "damage to the ecological environment" to "serious consequences", which is an expansion of the result element. The consequences of environmental tort cases are dualistic in nature, and serious environmental tort cases include not only personal, property and even mental damage, but also ecological and environmental damage. The damage to the ecological environment is mainly the loss of ecosystem function caused by the destruction of the environment, that is, "the pollution of the environment, ecological damage caused by adverse changes in environmental and biological elements and the resulting degradation of the ecosystem function". [8]Therefore, in the judgment of the result element, we should pay attention to the duality of damage consequences in environmental infringement cases.

4. Analysis of the Limits of Punitive Damages for Environmental Torts

The Civil Code introduces punitive damages and imposes corresponding restrictions on its constituent elements. Its purpose is to realize the reasonable application of punitive damages. The law does not clearly limit the amount of punitive damages the infringer will ultimately bear, that is, "the infringed has the right to request corresponding punitive damages". The so-called "correspondence", generally scholars believe that not only the situation of the victim, but also the situation of the perpetrator should be taken into consideration. Therefore, the scope, amount, calculation method and other aspects of punitive damages for environmental infringement need a limited standard, and at the same time, there should be corresponding restrictions on the discretion of judges.

4.1. The Function of Filling Damage by Punitive Damages for Environmental Tort

In a country ruled by environmental law, environmental interests are one of the important components of public interests and have an important position. However, the phenomenon of damage to the ecological environment is still widespread, mainly due to the low cost of violations, the insufficient deterrent and restraint power of punishment means, and the failure of government environmental governance, which is the main body of the protection of ecological and environmental interests. As an important supplementary means of public enforcement, punitive damages for environmental infringement can further strengthen the function of filling damages by compensating for damages that are difficult to be valued through legal means and deterring potential future ecological infringements, thus enhancing the overall effectiveness of enforcement.

4.2. The Relationship Between Punitive Damages and Administrative Fines and Criminal Fines

In the eco-environmental violation system, in addition to criminal and civil violations, violations also have administrative violations. Some scholars believe that because administrative fines and

criminal fines are punitive in nature, the superposition of the three will not only produce public power inaction, but also may cause excessive punishment and deterrence to the illegal behavior, resulting in the substantial "multiple punishment". Therefore, it is necessary to clarify the relationship between the three.

The new Environmental Protection Law provides for a system of continuous daily penalties, which is one of the manifestations of environmental administrative penalties, and it is a continuous accumulation of high fines imposed by the environmental authorities on a daily basis on offenders who refuse to rectify the situation. This system has to some extent changed the adverse legal consequences of the low cost of violations caused by the low amount of fines imposed by the previous environmental administrative penalties, but the disadvantages of the continuous daily penalty system are also obvious, namely, the small number and extremely limited scope of the categories of violations to which it applies .

From the current administrative enforcement effect, the application of the system of continuous daily penalties is not satisfactory. Since a large number of environmental damage cases cannot achieve punitive purposes through administrative fines, the application of the punitive damages system for environmental infringement has been able to achieve its punitive and deterrent functions.

Amendment (XI) to the Criminal Law stipulates that discharging, dumping or disposing of all kinds of hazardous substances in violation of state regulations, causing serious pollution and constituting the crime of environmental pollution, is punishable by imprisonment, detention and a fine. This provision does not provide details on the circumstances of the crime, the manner of setting fines, and the imposition of fines, thus giving judges a large degree of discretionary power, the legal effect of which is largely dependent on the personal ability of judges. From a large number of environmental infringement cases at present, there are few cases in which infringers are sentenced to high fines in criminal fines, and it is difficult for the criminal procedure to achieve its punitive function. Therefore, when criminal fines cannot achieve the purpose of punishing infringers, the introduction of punitive damages for environmental infringement has practical significance.

Administrative fines and criminal fines are mainly collected by the state environmental protection department and attributed to the state. Punitive damages are established by the court and belong to the plaintiff of public and private interests, and are used to compensate for damage to persons, property and the ecological environment. It is important to note that, under the current law, administrative fines and criminal fines are for general violations of the law, while punitive damages are for violations that cause serious consequences and are intended to achieve specific relief for environmental public and private damages. The role of administrative fines and criminal fines in environmental infringement cases is extremely limited, and they cannot achieve the purpose of punishing the perpetrators and protecting the ecological environment. Therefore, the introduction of punitive damages for environmental infringement does not conflict with the current system of punitive liability for ecological and environmental violations.

4.3. Rules for Calculating Punitive Damages

(1) Follow the principle of equal punishment

The amount of punitive damages is too low or too high, which can lead to social problems. Too low is not easy to attract social attention and play a deterrent and preventive role, while too high will be unfair and difficult for the perpetrator to bear. The application of punitive damages in environmental public interest litigation involves both the development of enterprises and the protection of the environment. Therefore, it is particularly important to explore the proportionality of compensation (the principle of excessive punishment).

The so-called principle of equivalent punishment means that the setting and implementation of punishment must be based on facts, which are equivalent to the facts, circumstances, nature and social harm of the illegal act. First of all, the remedies in the current environmental protection legal system include administrative penalties, criminal fines and punitive damages. If the criminal fine or administrative penalty passed by the perpetrator can satisfy the compensation and

punishment for environmental damage, punitive damages should not be applied. Secondly, environmental tort is different from other torts, it is a continuous "harm chain", which is long-term and uncertain. When making up for the current irreparable damages, punitive damages should also be evaluated in combination with multiple factors, so as to avoid excessive enforcement and at the same time to restore the public interest, so as to avoid the perpetrator from bearing excessive punishment. Thirdly, punitive damages should be limited to the smallest amount of compensation, and the legal effect of deterrence can be best achieved only if the punishment is within the capacity of the perpetrator. Finally, the judge should be given discretionary power within certain limits, such as the judge should consider the subjective conditions, the serious damage consequences, the profit purpose of the wrongful act, the actual economic situation of the perpetrator and other aspects to make a comprehensive evaluation of the case.

(2) Specific calculation method: base multiplier method

For the calculation of the amount of punitive damages, the following methods have been adopted in China's legal practice: first, the base multiplier method to determine the amount of punitive damages, that is, the amount of punitive damages can be either a multiple of the actual loss suffered by the infringer or a multiple of the infringer's illegal income, and the degree of punishment is linked to the urgency of the relevant infringement that needs to be stopped. Second, the maximum amount of compensation is directly stipulated. Third, both the maximum amount and the minimum not to exceed a number of times the amount of compensation are stipulated. With respect to the maximum amount, in addition to the possibility of direct bankruptcy of the enterprise due to excessive penalties, the penalty may also be too light to serve as a deterrent. Therefore, the base multiplier method is more reasonable as the calculation method for the amount of punitive damages in China.

As far as the specific legislative situation is concerned, compared with the compensation amount in Articles 1185 and 1207 of the Civil Code, the amount of punitive damages for environmental infringement can be referred to the provisions of the Special Law. The calculation gives judges greater discretion. Combined with the experience of the comparative law, the base of the compensation amount in Article 1232 can be determined with reference to the following standards: First, the cost of ecological environment restoration; Second, the loss during the period from damage to the ecological environment to the completion of functional restoration, that is, the period cost; third, the cost of investigation, appraisal and evaluation of ecological environment damage; fourth, the cost of removing pollution, restoring the ecological environment, and preventing the occurrence and expansion of damage. Reasonable expenses; fifth, losses caused by permanent damage to the ecological environment. After comprehensively considering various factors, the judge can finally determine the base of the compensation amount and control a reasonable multiple, so as to better play the punitive purpose that the legislators want to achieve by creating the punitive compensation system for environmental torts.

5. Conclusion

In general, because of the existence of domestic capital markets, a company's financing practices are less constrained by its financial position. However, although internal capital markets make it easier for company managers to access capital, the ease of access to capital by company managers often results in inappropriate choices of companies or, as a result, in the selection of companies that should not have been chosen because of poor economic performance, and this can have a negative effect on the overall effectiveness of the company. Therefore, in addition to the supply of capital, the internal capital market also has a significant role in the management of the company due to the different owners and users of capital.

References

[1] Wang Liming. Highlights of the liability for environmental pollution and ecological damage in the Civil Code [J]. Guangdong Social Science, 2021(01): 216-225+256.

- [2] Chen Falong. Application of Punitive Compensation in Environmental Tort Liability [J]. Guangxi Quality Supervision Guide, 2021 (04): 260-261.
- [3] Wang Xiaoxiang. Judicial application of punitive damages in ecological and environmental infringement---and analyze article 1232 of the Civil Code [J]. Environmental and resource Law Theory cluster, 2021,13 (00): 266-276.
- [4] Liu Qiyang. The legal nature of punitive damages and its institutional function under the intersection of public law and private law [J]. Journal of Jinyang, 2018 (03):129-135.
- [5] Xu Congying. Lost and Reconstruction of system: Reflection on the punitive compensation mechanism of trademark right in China [J]. Intellectual Property Rights, 2015 (12): 39-46.
- [6] Yang Lixin, Li Yiwen. The construction of punitive liability for ecological and environmental torts - the legislative significance and improvement of Article 108 of the Tort Liability Part of the Civil Code (Second Review Draft) [J]. Journal of Henan University of Economics and Law, 2019,34(03): 15-24.
- [7] Hu Hongling. Reflection and improvement on the application of daily penalty system for environmental protection---Taking the U.S. daily penalty system for environmental protection as a reference [J]. Politics and Law, 2018(08):150-160.
- [8] Qin Di. Development and achievements of administrative rule of law in China [J]. Legal Affairs Expo, 2021 (33): 48-50.