

Application of Punitive Damages for Ecological Damage

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Abstract: In 2022, the Supreme People's Court issued a judicial interpretation on the application of punitive damages for ecological environmental infringement, clarifying that punitive damages as an additional liability, that is, the establishment of punitive damages for ecological environmental infringement must be based on compensatory damages. However, the judicial interpretation identifies the liability for punitive damages as civil liability, which to some extent follows the practice of British and American legal countries. However, China's environmental judicial practice ignores the dual orientation of the legal connotation of ecological damage, including "pure ecological damage" and "human-ecological compound damage". This paper believes that the introduction of punitive damages, help to clarify the applicable order relationship between private interest litigation and ecological restoration, in the order of environmental interest litigation imbalance, the law should clearly prohibit the ecological environment infringer repetitive punishment, will focus on the remedy of the ecological environment damage itself, expand the subject of environmental damages for punitive damages and the scope of application, will violate the principle of compensatory.

Keywords: Ecological damage; Punitive damages for public welfare; Teleology; Explanatory theory; Compensatory principle

1. Introduction

So far, the legal rules of the application of punitive damages liability in the litigation of ecological and environmental damage compensation are not very clear, which has led to the debate between the academic circle and legal practice circles for a long time, which is mainly divided into judicial practice views and theoretical theories. Judicial practice view that the scope of environmental infringement punitive compensation should be extended to ecological environment damage, the reason according to: first, the current civil code in article 1232 of the environmental infringement punitive compensation system does not completely exclude the application of ecological environment damage, namely, although environmental public welfare infringement cases has strict applicable conditions, but there is no substantial conflict with restorative judicial concept, and unlikely to punish replace repair, so that punitive liability can also apply to ecological environment damage compensation cases; Second, because punitive compensation itself has the purpose of punishment and warning, if it can be applied to ecological damage, China's judicial determination on environmental protection can be highlighted, so as to effectively curb the increasingly fierce environmental pollution and ecological damage in recent years. And the theory of view from the composition of ecological environment damage conditions and the legal purpose or system function, that ecological damage litigation case should not apply, because the civil code only stipulates the environmental tort punitive damages legal conditions, ecological damage cases punitive damages liability legal basis is insufficient. The reasons are roughly in two aspects: on the one hand, Although the claimant for punitive damages for ecological environment infringement is not limited to civil subjects such as natural persons, Can expand to authorized state organs or environmental organizations, But after all, there are obvious differences between environmental infringement cases and ecological damage compensation cases in the legal provisions, For example, the basis and scope of application of environmental civil public interest litigation is far more extensive and accurate than ecological damage compensation litigation, In pure ecological damage compensation cases, the ecological damage relief mode specially stipulated in the civil Code should be followed, To distinguish it from the way of civil damage compensation under the traditional model, Moreover, taking the original restoration or ecological restoration as the center of ecological damage relief is also in line with the

sustainable development concept of modern environmental law.

To sum up, the author believes that the relationship between ecological damage liability should be clarified from the perspective of legislative teleology and interpretation, which has important theoretical guiding significance and practical value for dealing with the boundary between ecological damage compensation litigation cases and environmental infringement litigation in judicial practice.

2. The negation of "punitive" compensation is applied to ecological damage from the perspective of teleology

From the perspective of teleology, it is legitimate to analyze punitive damages to ecological damage. In order to facilitate the ecological damage cannot apply punitive liability responsibility, this paper will be divided into social teleology and legislative teleology, social teleology requires ecological damage compensation socialization, legislative teleology mainly pursue punitive liability negative legislative effect, mainly divided into the following roles.

2.1. The "public welfare" balance of punitive damages: punishment, containment, education and incentive effect

From the perspective of social teleology, although punitive compensation has an obvious "public welfare" role, that is, it has the function of weighing the advantages and disadvantages of society, mainly including punishment, containment, education and incentive functions, but it has an unavoidable weakness, "public and private interests". Specifically, driven by the huge interests of punitive damages, there must be some environmental claimants with impure motives (whether local procuratorial organs or third interests) to use illegitimate means to obtain illegal benefits or additional benefits. In reality, there is no lack of real benefits. It is important to note that the social background and legislative background of double coupling is also lead to punitive liability in the field of consumption law and applicable important factors, the typical example is sanlu milk powder incident cause the Chinese people strongly worried about food consumption safety issues, this undoubtedly accelerated the punitive liability in the tort liability law formally established in the legislative process. Different, a fundamental problem involved in ecological damage is the definition of the legal connotation of "ecological damage". Professor Lv Zhongmei believes that ecological damage, the ecological environment damage it should follow the "no damage is no responsibility" legal logic premise, so it believes that ecological environment damage is a relatively broad legal concept, mainly refers to the ecological environment damage compensation system of ecological damage, namely environmental rights and environmental damage and a state of legal interests. It can be seen from this definition that this scholar mainly obtains the two major components of ecological environment damage connotation based on the dual characteristics of environmental infringement: (1) normative elements and (2) ecological environment public welfare. yet, The author does not agree with the legal attribute definition of the latter composition, That is to say, the environmental rights and interests involved in ecological environment damage are two different "combination" of private interests and public welfare, The reason is that although public welfare is not explicitly stipulated in law in China, But private gain is a conventional legal concept, That is, private personal and property interests, Mainly adjusted by the civil law, In addition, articles 1232 and 1235 of the current Civil Code also stipulate the application of punitive damages for environmental infringement and the scope of ecological environment public welfare respectively, In order to distinguish between Article 1234 and liability for ecological environment damage, It should be listed as a coexisting "public law" responsibility, Only in this way can it play a more effective legal protection effect on environmental protection. Therefore, the author advocates that ecological environment damage is a kind of public welfare damage rather than compound damage.

However, if the form of punitive compensation is used in ecological damage, the responsibility is obviously a mixed responsibility form of "private law (main) + public law (auxiliary)", which still belongs to private law responsibility in nature. The purpose is to weigh the "public welfare" and effectively play the four functions of punitive compensation liability: punishment, restraint, incentive and education.

2.2. Legislative purology

From the point of legislative purpose, namely from the perspective of legislation, professor Zhang Xinbao thinks, punitive damages first in British law tort system, and mainland law system does not adopt

the system, the reason is mainly German law that civil law is equal subject "applicable law", the two parties equal legal status, will not produce one party has the right to punish the other side of the legislative effect. More importantly, the German courts have also rejected the general use of punitive damages in real cases. Because they held that the judgment was substantially contrary to German public order, the court had authority to refuse to enforce it. As can be seen from the above German and British legislative examples, we can see that German law still adopts a prudent reservation attitude towards the application of the law on the scope of punitive damages. When it comes to ecological damage compensation litigation cases, some people believe that punitive damages make enterprises bear excessive economic costs, which is extremely unfavorable to the research and development of new products and new technologies related to environmental protection. Therefore, punitive compensation is undoubtedly a very severe form of liability.

In addition, if expanded in the legislation of the scope of punitive damages, may be with the civil code of article 1235 of the legislative purpose, because the provisions of the scope of public interest litigation clearly excluded the environmental civil subject of private interests, namely personal injury and property damage. However, the author believes that it is appropriate to define the "damage result" in the punitive damages liability as a kind of private damage result, that is, private benefit damage. The reasons are as follows:

First of all, based on environmental infringement cases, the object invaded by environmental infringement may have private or public benefits, but the object of the damage is determined by the specific victim, so there is no need to involve the measurement of the public interest other than the victim. Therefore, private interests mainly include personal rights such as the right to health and ownership, usufructuary right and other property interests.

Second, relative to private interests is "public welfare", the current environmental protection law does not clear the specific connotation and type of "social public interest", but from the perspective of existing environmental infringement cases of judicial disposal, the court generally identified it as causing unspecified environmental rights damage, is regarded as "social public interest". From the perspective of the legislative system of the Civil Code, the punitive compensation liability for environmental tort is stipulated in Article 1232, while the ecological environmental restoration liability under the ecological environmental damage compensation system is stipulated in Article 1234. Thus it can be seen that the punitive compensation liability with private benefit attribute is obviously inferior to the ecological environment restoration liability with public law attribute. The purpose of legislators may be to emphasize the priority of punitive compensation liability under the civil law system as a public law liability under "private rights and interests". The reason why the subjective elements of punitive compensation for environmental infringement should be the primary condition for the application of environmental infringement cases is that it fully conforms to the main function and purpose of punitive compensation, that is, punishment and education. If there is no subjective intent or gross negligence of the tortfeasor, there is no need to apply punitive damages. Moreover, banning the application of punitive damages for ecological damage helps to avoid the bad motivation of the ecological damage claimants to pursue additional interests and avoid the abuse of the right of action.

Finally, a careful analysis of the essence of ecological damage compensation liability can find that there is such a logical approach: individual economic interests and ecological laws benefit public environmental interests (the interests of most people). Therefore, in order to eliminate the "external ineconomy" generated in the process of environmental resource utilization, the external cost internalization activities must be carried out. Therefore, the essence of the compensation liability for ecological damage is "the process of externality internalization", and the ecological damage compensation liability of the offender is implemented through law, so that it can bear the responsibility of management, restoration or compensation for ecological damage.

To sum up, the ecological damage responsibility is not only the filling of the public environmental interests, but also a defensive responsibility based on the purpose of risk prevention, because the occurrence of ecological damage itself has a high degree of scientific uncertainty.

3. The discrimination of punitive damages for environmental infringement should not be applied to the ecological damage under the interpretation theory

Because the constitutive elements, institutional structure and internal mechanism of China's current environmental tort liability system are the natural logic extension and refinement of the traditional tort liability system, adhering to the civil law concept of "no damage is no responsibility" essentially belongs

to the result responsibility. Ecological damage is just in line with the resulting responsibility under this concept, because the ecological damage caused may be both "pure environmental damage", that is, no damage to people, and may be both damage to people. For the ecological damage itself, so if the punitive compensation liability is imposed on the perpetrator of the ecological damage, it is undoubtedly a disguised admission that the ecological damage itself is condemned. Although it is very important for protecting the ecological environment, it is not conducive to the systematization and unification of the responsibility rules, and may cause the chaos of the ecological responsibility system.

If the objective explanation of punitive compensation, that is, aims to explore the purpose and meaning of the establishment of punitive compensation law, then the results of objective purpose inquiry (also known as "objective purpose interpretation") will have two kinds: one is teleological expansion, the other is teleological restriction. The former will obviously have the negative effect of wantonly expanding the application scope and function of punitive damages, and thus increase the total amount of liability of the defendant and increase the burden of liability. This negative effect is described in detail below. Therefore, it is not appropriate to expand whether punitive damages liability for ecological damage, And it should be interpreted in reverse, That is, the scope of environmental infringement from the perspective of teleological restriction, Because punitive damages have been strictly restricted by various countries since their birth, In addition, the "punitive damages" contained in the article itself is too broad or is too general, Clearly going against the objective purpose of the law, Therefore, the author believes that it should be limited to the damage consequences of the constituent elements of environmental infringement is only within the scope of "private benefit damage", It is helpful to distinguish between "pure civil rights" and "pure public interest" in preventive environmental public interest litigation and environmental civil private interest litigation, Because the legislative original intention of the three systems and the performance of the system are completely different. Ecological environment damage Compared with traditional damage (personal and property damage), ecological environment damage infringes on social and public interests, and there is no specific corresponding infringed. From the above claims of the subject of ecological environment damage compensation and the particularity of the infringer, visible, if by the ecological environment damage compensation system reform plan of the ecological damage compensation holder, namely provincial and municipal government or its designated departments or institutions claim punitive compensation, is obvious, so there must be the subject of legitimacy and legitimacy.

4. The application of punitive damages in ecological damages compensation litigation is suspected of overcorrecting

4.1. Potential legal effect of repetitive compensation

According to the relevant discussion, the legal measure of punitive damages lies in clarifying the legal true meaning of "punitive damages". — "compensation" is the legal essence of punitive damages. Therefore, the full proposition of "compensation" is "damage compensation", which has become a specific form of civil liability, so as to deduce that punitive compensation is no exception, and also as a specific system of damage compensation. As the so-called "profit and loss" jointly advocated by the mainland law system and the British and American law system, that is, we only need to compensate the victim for the damage suffered.

As is known to all, only the legal subject who has made the provisions can file a specific tort civil lawsuit. Both environmental tort or ecological damage compensation lawsuit need to determine the specific environmental infringer, so as to claim punitive compensation or damage relief against the ecological environment offender. In fact, in the ecological damages litigation is not to the infringer to "double" punishment, but because the ecological damage itself played the legal function of "compensation" and social effect, superposition of new punitive liability way, will obviously make the environmental public interest litigation and private interest litigation benefits imbalance. Moreover, the protection of environmental infringement punitive damages litigation both environmental public welfare and environmental interests, and pure ecological environment damage of ecological damage damages legal protection object and environmental infringement litigation obviously different, it is equivalent to the environmental infringer bear legal double punitive damages, namely: environmental public punitive liability + ecological public punitive damages = double punitive damages, will cause repetitive compensation legal effect, but also obviously violates the fair principle of the civil law.

4.2. The system purpose and function scope overlap

First, compared with punitive damages can play a certain environmental risk prevention function, but ecological damage is obviously different from ecological restoration responsibility, the latter is different from the general civil liability, namely ecological value to public, responsibility content of compensatory function, relief target of diversity, the content of environmental restoration responsibility. However, from the point of ecological restoration responsibility content has compensatory function, if the ecological environment damage compensation lawsuit can apply punitive compensation liability, which and ecological restoration responsibility itself has repair purpose of punitive function overlap, in other words, punitive damages will exist with other punitive means of purpose and function. Because the environmental liability stipulated in China is not limited to environmental civil liability, there are three forms of liability, including environmental administrative responsibility and environmental criminal responsibility. This means that if punitive damages are applied in the same ecological damage case, the liability burden of the ecological infringer will inevitably be increased, which obviously violates the original purpose and function of the system.

Second, from the investigation of the origin and development of the origin of the punitive damages system, in view of the natural purpose of punitive damages, it is equivalent to the additional liability of the actor on the basis of the compensation for the actual damage. Therefore, punitive compensation is essentially contrary to the traditional filling rule. So how to effectively prevent the system is abused or impose repetitive punishment has become the inevitable central issue of today: one to stick to the punitive intentional liability requirements, the second is should conform to the law set up the basic purpose of punitive damages, is only for the circumstances are serious environmental infringement for punitive sanctions, rather than just sanctions for intentional infringement itself.

Third, the dependency characteristics of punitive compensation are contradictory to the litigation of ecological damage compensation, which is mainly manifested in the subordinate attribute characteristics of punitive compensation for the compensation. If the party filling the compensation fails to exercise the right, the claimant of ecological damage compensation can not claim the corresponding punitive compensation. In addition, according to the preventive public interest litigation stipulated in Article 19 of the judicial interpretation of environmental tort litigation cases issued by the Supreme People's Court, the civil liability does not include the liability of damages, but is limited to the general act liability and the additional reasonable expenses incurred by the act. This is exactly contrary to the subordinate attribute characteristics of punitive damages. Therefore, punitive damages cannot be applied as an ecological damage compensation lawsuit with preventive function.

4.3. It may only increase legal costs and reduce the efficiency of environmental justice

The mainstream view of legal cost theory believes that the rational choice of legal subjects must involve the serious balance of legal cost and benefit, because environmental legal cost is the foundation of the construction of environmental rule of law, and environmental legal benefit is the goal of environmental rule of law. (p235) Legal economists believe that legal costs refer to all the expenses incurred in the operation of the legal system. It exists in a series of legal activities, such as legislation, law enforcement, justice and law-abiding. In terms of legal cost, it has three properties: production cost and legal cost are divided into two categories: human — natural relationship and human relationship; legal cost belongs to "non-productive cost" beyond productive cost, as proposed "transaction cost"; law aims to reduce and minimize social transaction costs. Specific to the ecological environment damage compensation litigation, if analogy environmental tort punitive damages system, punitive damages liability, because of the current environmental infringement cases, the environmental infringement case of judicial costs increased, combined with the ecological damage for detailed punitive damages legislation, may also increase the cost of legislation, and the relief cost of the parties. Because the parties need to request to restore their original interests or obtain compensation according to law, they must first negotiate with the parties or make full preparations in the burden of proof in advance to avoid the loss of interests. In this complex negotiation process, it is inevitable that a part of the relief costs and judicial costs will be sacrificed.

According to the Hand formula, $B < PL$, this paper makes the following assumptions: B represents the economic burden of environmental preventive measures, P represents the possibility of environmental infringement, and L represents the damage caused to other environmental stakeholders after the implementation of the environmental infringement. Only when the cost of preventing future environmental accidents is less than the possibility of the expected environmental accidents multiplied

by the expected environmental accident loss, the environmental damage person should bear the tort liability for negligence. Similarly, why should the perpetrators of ecological environment damage impose additional punitive damages liability on them, also without subjective intention? This is most likely to result in a significant increase in the legal costs.

In the process of making the tort liability law, product defect liability punitive damages, for example, in the field of civil compensation for comprehensive punitive damages, easy to cause the plaintiff without legal basis of windfall, is likely to break the bottom line of legal regulation, breeding moral hazard kidnapping soil, leading to consumers slack to protect their personal, property rights, eventually occur a lot of unnecessary phenomenon, waste judicial resources. Now the civil code does not adopt a few experts to establish a comprehensive system of punitive damages, because general views and the legislature believe that if not the punitive damages within the scope of malicious infringement, so often appear punitive damages cases in reality, greatly increased the punitive damages using side effects. For example, especially the legal cost of judicial costs, the reason is that in the process of dealing with environmental tort punitive damages litigation cases, have the right to bring environmental tort punitive damages liability subject must prove tort actor has subjective intentional or gross negligence, the judicial organ, so the proof of subjective fault in judicial practice inevitably need to consume a lot of judicial resources to prove the tort actor's subjective intentional or gross negligence. It is because the punitive compensation for environmental tort clearly stipulates in the Civil Code that the subjective elements need to prove the intention of the infringer, that is, the infringer knowingly violates relevant laws, intentional environmental infringement (environmental infringement mainly including environmental pollution and ecological damage) activities. From the point of view of the damage consequences requirements, there should be serious environmental damage consequences.

According to the relevant theory of tort in law and economics, both the determination of compensatory damages and the determination of punitive damages must follow a common principle: the principle of efficiency. That is to say, both should internalize the external damage caused by environmental infringement through damages, so as to promote people to fulfill the duty of care of the legal prevention standard, or reduce the probability of various infringement by increasing the expected cost of intentional infringement. Thus, if both in the ecological environment damage compensation cases and environmental public interest litigation case superposition or mix, then low efficiency or even inefficient environment judicial effect, because the case involved subject, increased the prosecution and the environmental victims proof difficulty, lead to judicial personnel and repeatedly into the case, may eventually lead to a serious waste of judicial resources, reduce the environmental judicial efficiency.

4.4. Bad motives that are not conducive to effectively curbing the additional profits of the victims

The reason why it is not conducive to effectively curb the additional profits of environmental victims is that if additional profits are made in ecological damage cases, it will be incompatible with the legislative purpose of the new environmental protection law that environmental victims are not allowed to file environmental lawsuits to make additional profits. First of all, the environmental public interests belong to all citizens, namely all citizens enjoy the use of environmental interests, however, cannot have the integrity characteristics of environmental interests artificially cut, and enjoyed by individual or citizens, thus violates the environmental legislation of environmental public interest litigation subject can not seek additional benefits from the prohibitive rules, if intentionally open the victim additional profit from environmental interests conditions, may encourage victims extra profit illegal motive or more against ecological environmental protection. Therefore, it is necessary to eliminate the possibility of using ecological damage with punitive means from becoming an "illegal motivation" at the source.

5. Conclusion

In conclusion, the jurisprudence of punitive damages is present or latent, but not self-evident or self-evident. We need to analyze the internal legal principle that punitive damages cannot apply to ecological damage through the legal method of legal teleology and legal interpretation theory. In pure ecological damage cases, the application of punitive damages can not effectively play the unique legal function and value of ecological damages compensation litigation, because punitive damages itself has severe punitive purpose and preventive function, obviously contrary to the actual filling principle of ecological damage compensation, this paper claims that in ecological damages should not be directly introduce punitive damages, the ultimate purpose of ecological environment protection is to pursue environmental justice and maintain the interests of both parties of ecological damage compensation balance.

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