

# Discussion on the Current Situation of Environmental Governance in the Context of Rural Governance in the New Era——Development based on Articles 9 and 1232 of the Civil Code

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**Abstract:** Rural revitalization is an important development strategy in China. In addition to improving the living standards of rural residents, it is also essential to protect the ecological environment and achieve sustainable development. Therefore, we should pay more attention to the issue of ecological environment protection in rural areas and manage it in accordance with China's national conditions. Therefore, based on the provisions of Article 9 and Article 1232 of the Civil Code, Punitive damages need to be applied to environmental infringement cases. This article conducts a theoretical analysis of the green principle and punitive compensation clauses for environmental infringement, and based on the current situation of rural development in China, studies its shortcomings and attempts to propose suggestions.

**Keywords:** Green principle, punitive damages for environmental infringement, rural governance, rural revitalization

## 1. Introduction

China is in a critical stage of the great rejuvenation of the Chinese nation, as well as transitioning from a developing country to a socialist modernized power. Therefore, we need to combine the green principle and punitive damages for environmental infringement to appropriately protect and govern the rural environment in China.

## 2. Concept proposal: Overview of green principles and punitive damages for environmental infringement

### 2.1. Green principle

#### 2.1.1. The Meaning of the Green Principle

Under the previous emphasis on the role of absolute government thinking in nature, the traditional civil code ignored the situation where the uncontrolled use of things could lead to environmental damage. Therefore, a situation where ownership is absolute and contracts are not subject to intervention has emerged. Meanwhile, traditional civil law emphasizes the protection of the personal and property rights of civil subjects, while neglecting their environmental rights; Focusing on the economic benefits that environmental resources can bring, neglecting the recyclable benefits they can bring. <sup>[1]</sup>As the environment deteriorates, therefore, we need to learn from the lesson that China has long been unilaterally pursuing economic development while neglecting environmental protection, which has led to its pollution. The Fifth Plenary Session of the 18th Central Committee of the Communist Party of China proposed the "New Development Concept". The report of the 19th National Congress of the Communist Party of China also further emphasized the construction of ecological civilization and the construction of clean water and green mountains. It was against this background that the green principle was put forward in the general provisions of the Civil Code and established in each section.

#### 2.1.2. The specific content of the green principle

Regarding "civil subjects engaging in civil activities". Indicating the scope of the principle's effectiveness and related subjects, "civil subjects" mainly refer to natural persons, legal persons, and

unincorporated organizations that participate in civil legal activities and enjoy rights and assume obligations. Civil activities "refer to activities that will have a certain impact on the environment, mainly including the discharge of pollutants, the utilization of resources, the extraction of animals and plants, and other behaviors that will have an impact on the ecology.

Regarding 'should'. This reflects the obligation of the civil subject, which is the unity of justice and coercion, indicating that if the principle is violated, the infringer will be punished by law.

Regarding "being conducive to resource conservation and protecting the ecological environment". Due to the collaborative efforts of multiple factors in the protection of ecological civilization, it is not necessary to be too narrow in practical legislation. It should be understood as "beneficial" or "beneficial", indicating that legislators hope that civil subjects can minimize environmental damage and achieve "beneficial" on the basis of "harmless".

At the same time, the purpose of this clear green principle is to "save resources and protect the ecological environment". The term 'resources' here refers to natural resources, and 'conservation' mainly refers to the rational planning and utilization of natural resources. The green principle is achieved through resource conservation as a means to achieve environmental protection. The fundamental principle of green is to scientifically and efficiently utilize natural resources, prevent, reduce, and treat pollution, and protect and improve the ecological environment.

## **2.2. Punitive compensation for environmental infringement**

### **2.2.1. The Meaning of Environmental Infringement**

Environmental infringement refers to the act of damaging or polluting the environment in violation of legal provisions related to environmental protection and pollution prevention. This behavior seriously damages the property, personal, and environmental rights of the state, society, and others.

The characteristics of environmental infringement are mainly manifested in:

#### **2.2.1.1. The inequality and non specificity of the subject**

Traditional civil law theory holds that civil subjects are equal, but with the development of society, enterprises gradually occupy an advantageous position in terms of financial, material, human, and information acquisition, resulting in a gradual loss of balance in the originally relatively equal civil society. On the other hand, Modern environmental infringement is not only manifested at the enterprise level, but also due to the lack of corresponding environmental awareness among unspecified entities, which accumulates over time in daily behavior. Therefore, there are great difficulties in finding perpetrators.

#### **2.2.1.2. Diversity and universality of objects**

Environmental infringement behavior has indirectness, and the behavior of the perpetrator is through the superposition of multiple links. Its behavior mode is usually: production of pollutants → emission of pollutants → impact of pollutants on the environment → entering the victim's field → causing damage,<sup>[2]</sup>resulting in the final damage result.

#### **2.2.1.3. The Value Opposition of Reason**

The proposal and recognition of the definition of environmental infringement is an inevitable result of the development of the times. As the famous Japanese environmental jurist Shohiko Harada once said: In order to improve people's welfare and ensure a comfortable life, human society must continuously engage in material and service production that is conducive to people's lives... With the expansion of production activities and natural development, there will always be more or less pollution and damage to the natural environment. Especially in the modern era of highly developed industrial technology, because the quality and quantity of industrial activities are both huge and high-density, the development behavior is carried out on a large scale, and the environmental damage has become significant. It can be seen that although the environmental tort should be rejected and condemned, because it will cause irreparable damage to personal health, property rights and environmental rights. But on the other hand, it is essential for human survival and social development, and it is difficult to abandon.

#### **2.2.1.4. The Indirectness and Continuity of Infringement**

The difference from traditional infringement behavior that directly causes damage to the person or

property of the infringed party is that environmental infringement behavior is the result of discharging pollutants, unreasonable use of ecological resources, and causing damage to the rights and interests of others and public interests. At the same time, after causing environmental pollution as a result of damage, even if the environmental infringement damage behavior is suspended, the damage result will exist for a long period of time and continue to have an impact.

#### **2.2.1.5. Latency and hysteresis of results**

As mentioned earlier, environmental infringement and damage have an indirect nature, so the damage caused by it often cannot be discovered in the first place. However, after it is discovered, it generally develops to a serious and difficult to clear level, which is a manifestation of the latent nature of its results. And the lag is also based on this. Due to the limited self purification capacity that the environment can carry, the process of pollutants being accumulated is also the process of damage being accumulated. Only when the pollution accumulates to a certain extent can the harm be manifested, which is the manifestation of the lag in the results of environmental infringement behavior.

#### **2.2.2. The meaning of punitive damages**

The concept of punitive damages originates from the Anglo American legal system and is a corresponding concept to compensatory damages. It refers to "in addition to compensatory damages, under certain conditions, especially when the perpetrator's behavior is malicious and recklessly disregards the rights and interests of others, in order to punish the perpetrator, they should pay a certain amount to the victim."<sup>[3]</sup> However, affected by the traditional legal culture, civil law countries generally compensate for losses as a way of compensation for damages. But with the development of society and the deepening of legal transplantation, civil law countries have gradually adopted punitive damages. In China, there is also a lot of discussion about it. Professor Wang Liming believes that punitive damages refer to the compensation made by the court that exceeds the actual damage. It has multiple functions such as compensating the victim for the losses suffered, punishing, and curbing illegal behavior.<sup>[4]</sup> Professor Liu Rongjun believes that punitive damages refer to the malicious act committed by the infringer or the act of gross negligence, with the aim of imposing punishment on the perpetrator and pursuing a general inhibitory effect. The court orders the perpetrator to pay the usual compensation, while at the same time, it is also possible to order the perpetrator to pay compensation higher than the actual loss of the victim.<sup>[5]</sup> In addition to this, at the national level, a series of laws and regulations such as the Consumer Rights Protection Law, Contract Law, and Tourism Law have been gradually introduced to gradually introduce punitive compensation systems, all of which demonstrate China's demand for the "penability" of using punitive compensation.

#### **2.2.3. The Establishment of Punitive Compensation for Environmental Infringement in China**

With the development of society, a series of erroneous behaviors that blindly pursue the economy while neglecting ecological environment protection have emerged, posing a serious threat to the production and life of the people. Therefore, the current situation of private interests being damaged due to environmental issues urgently requires adjustments in private law. Therefore, the Civil Code specifically establishes the "Green Principle" in the General Provisions and provides for "Environmental Pollution and Ecological Damage Liability" in the seventh chapter of the Tort Liability Code, reflecting the regulation of civil law as a private law on tort liability caused by environmental issues. Article 1232 stipulates that by incorporating ecological damage into the scope of application of the punitive compensation system, Given the right of the infringer in the legal relationship of environmental infringement to request punitive compensation for the infringer, the malicious infringer is not only subject to increased sanctions, but also prevented from engaging in illegal activities by increasing the cost of illegal activities, resulting in a "flexible" radiation range of environmental infringement liability.<sup>[6]</sup>

### **3. Question raised: Current situation of rural development in China**

According to data from the National Bureau of Statistics, the urban-rural income gap gradually narrowed from 2011 to 2021, with the total income of rural residents showing a continuous growth trend. Among them, the per capita disposable income, wage income, net operating income, net property income, and net transfer income of rural residents also showed a continuous growth.

From 2012 to 2022, China's forestry land area, forest area, artificial forest area, forest coverage, total standing timber volume, and forest volume have all steadily increased year by year. This indicates that China has made great achievements in returning farmland to forests, and forests have been well

protected.

From 2013 to 2020, the discharge of major pollutants in wastewater and exhaust gas in China showed a two-stage trend. From 2013 to 2016, the emissions of most of the two pollutants increased year by year, while from 2017 to 2020, they gradually decreased, indicating significant progress in China's pollutant control work.

#### **4. Policy requirements for environmental governance in the context of rural governance in China**

In 2021 and 2022, the No. 1 central document of the Central Government stressed the importance of rural revitalization and the ecological environment in rural governance. In 2022, the No. 1 central document of the Central Government stressed that rural revitalization is the focus of the work of agriculture, rural areas and farmers, and rural governance is one of its key tasks. Farmers are the main body of rural revitalization work and rural living environment governance, and are an important foundation for promoting the implementation of rural revitalization strategy. Leveraging farmers' autonomy is of great significance for improving rural environment and building beautiful rural areas in China.

On March 5, 2022, Premier Li Keqiang pointed out in the Report on the Work of the Government for 2022 that in 2021, China's ecological civilization construction, ecological environment quality, people's living standards, and disposable income of residents have achieved great improvement and enhancement through the efforts of the government in many aspects and at many levels. It also requires that in 2022, we should vigorously adhere to agricultural production, promote rural revitalization, continue to improve the ecological environment, promote green and low-carbon development, strengthen pollution control and ecological environmental remediation, handle the relationship between development and emission reduction, coordinate the management of mountains, rivers, forests, fields, lakes, grass and sand systems, and promote the harmonious coexistence of human and nature.

#### **5. The Legal Problems of Rural Environmental Governance in China under the Background of New Era Rural Governance**

As a country with a history of 5000 years, China has long been dominated by a self-sufficient small-scale peasant economy. Even with an urbanization rate of 64.72% today, according to the results of the seventh national population census, the rural population accounts for 36.11% of the national population, making it an indispensable force for China's development. Although the basic infrastructure construction in rural areas has been improved, the coverage of the Huhutong project is wide, the renovation of dilapidated houses has made great progress, and the hygiene situation and awareness have also improved. At the same time, people also hope to survive in a more beautiful, livable, and healthy environment. Therefore, it is urgent to change the current situation of chaotic environmental management and severe pollution in most rural areas.

##### ***5.1. Traditional environmental protection systems are insufficient to protect environmental private interests***

The traditional compensation system in our country usually leans towards the principle of homogeneous compensation, but it cannot adapt to environmental infringement and cannot guarantee relief to the legitimate rights and interests of the infringed party. Insufficient compensation for mental damage, as environmental infringement often causes sustained and uninterrupted damage to the victim and their descendants, which will result in long-term psychological damage. However, compensation for mental damage in China is often applicable in clauses such as human rights insults; The scope of application is limited. Nowadays, although China promotes ecological damage compensation, it mainly applies to cases that have already caused serious damage results. However, environmental pollution in rural areas often only becomes well-known to the public when the results are severe; There is an imbalance between illegal costs and accountability. The subject of environmental infringement is usually a large enterprise with strong economic strength, which can extract great economic benefits through polluting the rural environment. Naturally, traditional compensation for damages cannot deter these enterprises.

### ***5.2. Rural residents lack the substantive right to participate, stop, and take the initiative***

In the process of urban development, a large number of polluting enterprises migrate to rural areas or use certain methods to directly transport urban waste to rural areas for burial. However, the rural population is relatively small and the area is open, and the knowledge and cultural level of residents and the narrow channels for obtaining information are limited. At the same time, it is a highly professional process to determine whether it constitutes a rural environmental infringement. It is difficult for rural residents to provide sufficient evidence to prove that it is difficult for them to conduct timely supervision on the emission behavior of enterprises, which means that they have lost their right to participate and initiative in disguise. In reality, the infringed is equipped with professional legal affairs in the application of law, and the infringer and the infringed are often in a situation of great disparity in strength.

### ***5.3. The subject of punitive compensation system for environmental infringement is vague***

In the process of practice, we have found a series of problems in the punitive compensation system for environmental infringement: the definition of the subject of the right to claim is not clear. Environmental infringement not only includes private interests, but also includes environmental public welfare. Article 1232 of the Civil Code only considers the "infringed party" as the subject of the right to claim, which is too general to determine whether the infringed party is a private subject damaged by environmental infringement, or includes administrative agencies or social organizations or procuratorates with the right to claim compensation for ecological environment damage.<sup>[7]</sup>

### ***5.4. The standard for punitive damages for environmental infringement is vague***

Article 1232 of the Civil Code stipulates that only the amount of compensation that the infringer needs to bear is set as "corresponding punitive compensation". This provision does not specify a specific upper and lower limit, which means that judges have a large amount of discretion. In reality, it is easy to cause arbitrary judgments, confusion in application, and perverted judgments, and it is also prone to judicial corruption, which will further exacerbate the difficulty of rural environmental governance.

## **6. Suggestions for the current situation of environmental protection in rural governance in China**

### ***6.1. Accelerate the construction of a compensation system focusing on environmental remediation, supplemented by punitive environmental infringement***

In addition to the punitive compensation system stipulated in Article 1232 of the Civil Code, Article 1234 of the Civil Code also specifies the subject and process of remedial measures after environmental infringement. In civil disputes, the main method of compensating for losses is usually economic compensation. However, in cases of environmental infringement, economic compensation cannot timely change the current situation of environmental damage and pollution, there is a long way to go from compensation to governance to initial results, and the rights to life, health, and property of rural residents will suffer sustained damage. Therefore, it is even more necessary for the responsible party to promptly and appropriately carry out effective repair and governance of the damaged environment.

### ***6.2. Clarify the subject of the right to request compensation for environmental infringement damages***

According to the Civil Procedure Law, the subjects entitled to file punitive damages for environmental infringement include three categories: the infringer, the procuratorate, and other environmental protection departments.

#### ***6.2.1. Infringer***

It mainly refers to citizens, legal persons, and other organizations who suffer personal damage, property damage, spiritual damage, and environmental rights and interests damage due to environmental infringement.<sup>[8]</sup> It refers to the first and most direct subject to receive losses after the occurrence of environmental infringement. Clarifying that it is the subject of the right to request can fully protect the legitimate rights and interests of the infringed party, enhance citizens' trust in the law,

and establish legal authority; On the other hand, only when citizens' legitimate rights and interests are protected can they be given confidence in participating in environmental governance, and can the environment be more comprehensively and truly protected.

### **6.2.2. People's Procuratorate**

According to Article 55 of the Civil Procedure Law of China, the People's Procuratorate, as the legal supervision authority in China, identifies it as the claimant, which is beneficial for it to better perform its supervisory function and provide national deterrence for illegal activities that pollute the environment. On the other hand, the Procuratorate can fill in the gap between the infringer and the infringe in terms of human resources, financial resources, and professionalism in environmental infringement cases, which is more conducive to achieving equal litigation, Protect the legitimate rights and interests of the parties involved.

### **6.2.3. Other organizations or departments**

The Civil Procedure Law stipulates that other organizations or departments related to environmental protection also have the right to file environmental public interest lawsuits. If the supervision of environmental infringement relies solely on the People's Procuratorate, it will be slightly insufficient in terms of constraints and supervision, as well as the specific implementation level. Therefore, it also requires the participation of public welfare environmental organizations and government environmental protection departments. First of all, environmental protection organizations for public welfare are professional and neutrality, and can better balance the relationship between the infringer and the infringed, because they are not for profit but for the purpose of maintaining the environment and safeguarding social and public interests. In addition, the intervention of the government's environmental protection department, as a dedicated department for protecting the environment, adds administrative supervision to the compensation for environmental infringement damages, which is more conducive to curbing the continuation of environmental infringement and further deterioration of the environment.

### **6.2.4. Establish a sound scientific distribution system for punitive damages**

Traditional environmental infringement cases generally apply compensatory compensation systems, which cannot fully protect the fairness of the infringed party. Punitive compensation systems can effectively avoid this point. Based on this, compensation should first consider the rights and interests of the infringed party. Combined with the experience of other countries, this measure is conducive to compensating for the losses suffered by the infringed party, protecting their legitimate rights and interests, and maintaining legal fairness and justice. Enhancing the recognition of the law is conducive to accelerating the construction of China's legal system. In addition, the maintenance of environmental infringement should not only focus on the present, but also look to the future, be proactive, and plan well. It is necessary to establish an environmental protection fund supervised by professional institutions. According to the specific situation of the case, a portion of the compensation should be transferred to the fund in a certain proportion for current and future ecological environment governance and restoration.<sup>[9]</sup> When situations arise where it is difficult to restore the environment through the infringer's own efforts, environmental protection funds can be used for restoration; Finally, it is necessary to fully leverage the government's macroeconomic regulation function and include a portion of punitive damages in the special funds of government departments. In reality, many impoverished areas have slow progress in environmental governance due to insufficient government funds. This measure is conducive to alleviating the government's financial pressure and ensuring that environmental protection departments can more efficiently complete environmental governance work, avoiding small losses and safeguarding the vital interests of the public.

### **6.2.5. Clarify the compensation standards for punitive damages for environmental infringement**

At present, there are usually three modes for determining the amount of punitive damages, namely fixed mode, elastic mode, and unlimited mode. The author believes that the fixed model cannot be adapted according to the specific situation of the case, and cannot cope with the complex and diverse case situations in judicial practice; The unrestricted model, which relies too much on the discretion of judges, can easily lead to judicial injustice and breed judicial corruption. Therefore, in cases of punitive damages for environmental infringement, applying the flexible model is a better choice.

Environmental infringement mainly causes property and personal damage to residents, as well as damage to the public environment. However, the harmful consequences caused by environmental infringement are difficult to determine in a short period of time, often hidden for a long time, affecting

a wide range of people and generations. Therefore, it is necessary to clarify standards, establish compensation levels, and ensure that citizens' legitimate rights and interests receive the necessary compensation. In addition, in the face of certain situations that have caused serious damage to the ecological environment, the amount of compensatory compensation that the infringer itself needs to bear is already very large. Therefore, it is also necessary to consider the infringer's own bearing capacity, enhance the judge's discretion, and appropriately reduce the punitive compensation amount for ecological environment damage based on the economic situation and actual damage of the infringer.

## 7. Conclusion

The ancient Roman proverb once said: the reason for legislation is the soul of the law, the reason for legislation is the purpose of legislation, and the purpose of legislation determines the content of legislation. Interpreting the punitive compensation system for environmental infringement from the perspective of teleology is of more practical significance.<sup>[7]</sup>

Rural revitalization is the future of rural development, and it is the foundation for achieving the great rejuvenation of the Chinese nation. To achieve rural revitalization, it is necessary to strengthen rural governance, ensure the protection of the ecological environment, and ensure the progress of the countryside. The improvement of the rural environment is a master of national security and people's livelihood. The construction of ecological civilization in rural governance is also related to the sustainable development of the entire society.<sup>[10]</sup> Therefore, the application of punitive compensation rules in environmental infringement has a great promoting effect on promoting China's ecological civilization construction, adhering to sustainable development, improving people's living standards, and safeguarding the legitimate rights and interests of citizens. This reflects the determination of China's law to protect the ecological environment and the resolute attitude of severely punishing those who pollute the environment. Admittedly, the punitive compensation rules for environmental infringement are a new phenomenon in China, and there are still some shortcomings. However, we believe that the development of things is a unity of progressiveness and tortuosity, and it is a spiral upward trend. This requires us to base ourselves on our own national conditions and learn from the advanced experience of other countries, continuously improve laws and regulations, and realize institutional value. As a part of the ecosystem, humans have a responsibility and obligation to protect the environment. We should work together to achieve harmonious development between humans and nature!

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