

# Research on the construction of ecological environment and civilization

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**Abstract:** *Accelerating the construction of ecological civilization and the rule of law is an important direction for the development of ecological environment at present, and the current deepening of the reform of ecological environmental protection mechanism has achieved obvious results, but there are also problems such as uncoordinated system of local laws and regulations, imperfect legislation on ecological environmental protection, and confusing legislation of various functional organs. Improvement of environmental legislation is the best way to enhance the construction of ecological civilization and play a practical role. The norms of environmental protection law and the civil code should be connected with each other, and the relevant rules should be adopted to realize the overall consistency with the civil code. The construction of ecological civilization should follow the green principle in the civil code, clarify the important role of the green principle in environmental protection legislation, delineate the boundaries between the environmental protection law and the tort liability law on ecological environmental protection, and put forward the improvement of the legislative system of ecological civilization, and realize China's ecological environmental protection by expanding the scope of the relief of environmental infringement, establishing the system of responsibility for ecological environmental damages, and shifting the system of damages to the restoration of the ecological environment.*

**Keywords:** *ecological damage liability; environmental pollution liability; green principle; environmental damage*

## 1. Introduction

The Civil Code provides for liability for environmental pollution and ecological damage, and there is a clear distinction between environmental pollution and ecological damage in terms of the mode of behavior, and these two types of behavior cannot be mixed. Pollution of the environment refers to the discharge of substances into the environment, which causes damage to the environment beyond its self-purification capacity or tolerance limit. Ecological damage refers to the irrational use of the natural environment, resulting in ecological imbalance, resource depletion and other damages. Pollution of the environment is mostly emissions, and ecological damage is mostly solicitation.<sup>[1]</sup> In our country, ecological environment damage is manifested in two forms. One is that the ecological environment has been damaged to change, this ecological environment changes can be detected through the detection of ecological environment sustainable development damage; the other is the damage to the ecosystem's functionality, that is, due to the ecosystem of physical, chemical or biological changes, resulting in ecosystem function degradation. The latter cannot be effectively remedied because it is not easy to detect and is difficult to be categorized as private interest damage under civil law. This paper will try to discuss the road of ecological civilization construction of the rule of law from two aspects of environmental pollution and ecological damage liability, to ensure the sustainable development of the ecological environment.

## 2. Status and problems of legislation on ecological civilization

China's environmental protection legislation has developed over the years, with the Environmental Protection Act in a commanding position, and the enactment of the Pollution Prevention and Control Act, the Ecological Protection Act, the Natural Resources Act, the Water Act, the Air Pollution Prevention and Control Act and a large number of statutes, regulations and ordinances, with the environmental protection system initially established. However, the existing environmental legal

system for the protection of the environment falls short of the requirements for the maintenance of the environment. On the one hand, due to the separation of environmental protection legislation and resource legislation in China's environmental legislation, systematically, environmental protection legislation and resource legislation are not in the same legal department; in terms of content, the purposes of environmental protection legislation and resource legislation do not match and harmonize. On the other hand, the ecological environment is regulated and relevant policies are formulated by different departments, and the policies are not articulated, which divides the public power of ecological environmental protection into the power of each department, and the phenomenon of sectoralization of the public power of environmental and ecological protection occurs. Under such circumstances, the application and enforcement of laws are very difficult to effectively protect the ecological environment. This has led to a lack of consistency in the environmental law system, with the existing legal system showing obvious decentralization, making it difficult to determine a uniform scale of adjudication. Although the Environmental Protection Law sets out some basic principles, it has not really achieved the status of a basic law.<sup>[2]</sup>

China attaches importance to the construction of an ecological civilization, while emphasizing the need to solidly promote the construction of ecological environmental protection.<sup>[3]</sup> This year, China has accelerated its legislation on ecological environmental protection, successively introducing a number of laws and regulations to promote legislation on water, atmosphere, land and sea, and at the same time, actively exploring ecological legislation in the countryside. In the Guangxi region, for example, the twenty-fourth meeting of the Standing Committee of the Thirteenth National People's Congress formulated the Decision of the Standing Committee of the Nanning Municipal People's Congress on the Amendment of Sixteen Local Laws and Regulations of Nanning Municipality on the Management of Gas, the Regulations on the Ecological Environmental Protection of the Liujiang River Basin in Liuzhou City, and the Regulations on the Protection of the White-Headed Lemur's Habitat in Chongzuo City.<sup>[4]</sup> Over the past five years, the field of ecological civilization has actively played a legislative role in the General Assembly, and has formulated 13 pieces of legislation, such as the Regulations on Prevention and Control of Water Pollution in Zhuang Autonomous Region.<sup>[5]</sup> However, existing legislation still fails to meet the needs of ecological protection.

Some regions of China have an ecological environmental quality that is at the forefront of the country, but there is an obvious lag in ecological environmental legislation, which is always in a state of untimely legislation in terms of overall ecological environmental development planning, the promotion of ecological and green development, and the promotion of a regional ecological environmental culture, etc. Relevant provisions on the rule of law for the construction of an ecological civilization are scattered throughout various laws and regulations, and there is a lack of special laws and regulations. The specific manifestations are as follows: First, the ecological environment legislation does not cover the part including atmospheric pollution, radiation pollution, land management, forestry pest management, ecological public welfare forest protection, river ecological protection. Secondly, the excessive use of chemical fertilizers in regional agricultural production has caused environmental degradation, which should be regulated by the timely introduction of corresponding laws. Third, legislation on the integrated construction of rural ecological civilization is missing. Fourth, the lack of legislation on ecological consumption, the lack of green eco-consumption concepts in various regulations, should be regulated to improve the residents' concept of ecological environmental protection.

In addition, the public interest damage to the environment should be studied and analyzed through the investigation of the environment, monitoring the information collected, the procedure has not been clarified in law, and it is difficult to judge the environmental pollution and ecological damage. At the same time, in the destruction of ecological environment cases, often lead to large-scale people's health suffered damage, in order to solve such environmental cases court hospitalization through judicial mediation to solve, and the government to take administrative compensation. These measures are mostly emergency measures that cannot improve existing environmental problems in a limited way, and their fairness and impartiality are questioned, and the current environmental tort law is unable to solve this problem.

### **3. The necessity and boundaries of following green principles in ecological civilization construction**

The Tort Liability Section of the Civil Code implements the "Green Principle", conforms to the ecological law for environmental protection, and improves the legal system for environmental

protection in the Tort Liability Section, establishing the goal that civil subjects should take into account the protection of the ecological environment when engaging in civil activities, and providing rule of law safeguards for environmental protection.

In terms of macro policy, as China's economy continues to develop, the construction of an ecological civilization has been raised to the height of a specific era in China's economic and social development. Environmental ecological civilization includes concepts and systems, and the rule of law system must reflect ecological civilization in order to implement the green principles of the Civil Code. Ecological and environmental issues are not only technical issues, the ecological rule of law is not simply a sectoral law issues, but requires the joint participation of all laws and the establishment of new operating systems and mechanisms.<sup>[6]</sup> Greening is an inevitable requirement for the development and evolution of the ecological civilization rule of law system.

In the identification of the relationship of environmental problems, the ecological environment is the object of civil legal relations, but different from the traditional object of civil legal relations, the current legal system attaches importance to the protection of its economic value, the lack of ecological value of the protection of the ecological value of the ecosystem as a whole, the environmental pollution and ecological damage is recognized as a necessary cost of production for the realization of economic development, ignoring the ecological value of its own. Therefore, environmental protection legislation must re-recognize the ecological environment's own value and should not sacrifice its ecological value in the excessive pursuit of economic value.

In the perspective of tort liability, the tort liability law protects the legitimate civil rights and interests of civil subjects from damage. According to the Tort Liability Law, the scope and degree of environmental protection are inversely related to the degree of environmental development and utilization. The responsible person bears the responsibility for environmental pollution and ecological damage. Environmental infringement cases should be regulated through the Environmental Protection Law, rather than the Infringement Liability Law. Tort Liability Law cannot achieve the green principle.

The Green Principle protects the common interests of mankind and thus restricts private free will, so the basic principles of civil law are ranked in value, affirming the value of the subject's free will in a positive way, and considering the principle of the coexistence of free will between the two at the level of the private subject. In addition, the free will of the private subject is restricted based on the consideration of public interest.<sup>[7]</sup> Therefore, it is necessary to define the boundaries of the green principles of the legal system of tort liability.

First of all, in terms of environmental protection, the object of the legal relationship provided for in the civil law and the object protected by the environmental protection law are not completely compatible. Continuing economic development has led to the deterioration of the ecological environment, and the importance of the ecosystem as a whole has been emphasized; the protection of the ecosystem should be promoted through the pilot project of "compensation for damage to the ecological environment", which considers the ecological environment to be public property, and in order to protect the public property, holds those who have caused damage responsible for compensating for the damage and repairing the damage.<sup>[8]</sup>

Secondly, in the environmental infringement liability determination, the cause of environmental damage includes two kinds of behavior, one is pollution of the environment, one is the destruction of ecological behavior, strict distinction between the two kinds of behavior may result in the scope of environmental protection law adjusted by the blurred boundaries of the scope of adjustment of the tort liability law, resulting in the confusion of the liability system, environmental rights and interests are difficult to get effective relief. The damage caused by environmental torts include personal injury, property loss and ecological environment damage. The ecological environment service function is permanently reduced, the destruction of biodiversity and other situations can not be relieved through the tort liability law. Therefore, environmental pollution and ecological damage should be regulated by environmental protection laws.

Lastly, in terms of environmental protection, the law of tort liability makes up for the damage suffered by the parties concerned by means of ex post facto remedies. The basic principle of environmental protection law is "prevention as the mainstay, comprehensive treatment", aiming to prevent environmental pollution and ecological damage through prior prediction and preventive measures, in order to avoid irreversible damage to the ecological environment and its functions. It is difficult to achieve the effect of the precautionary principle of environmental law by means of ex post facto remedies under civil law, and therefore a distinction should be made between remedies under civil law and remedies under environmental law.

#### 4. Ecological civilization improvement proposal

As mentioned above, environmental torts lead to personal property damage and ecological environment damage, of which ecological environment damage, such as ecological function degradation, biodiversity degradation, etc. cannot be included in the scope of tort liability relief, therefore, in order to build an ecological civilization, it is necessary to expand the scope of environmental tort liability. For the damage to the public welfare ecological environment leading to the degradation of ecosystem function. Specialized laws on environmental protection are needed to provide relief.

In addition, the ecological environment damage can be adjusted through the tort liability law because: First, the scope of relief of the tort liability law includes the ecological environment damage, but the ecological environment damage is different from the traditional personal damage or property damage. When regulating ecological environment destruction behavior, attention should be paid to the economic and ecological value generated by the ecological environment. The scope of relief in tort liability law and environmental protection law is different, while tort liability law focuses on protecting property value and environmental protection law focuses on safeguarding ecological value. Secondly, by utilizing the punitive compensation system, we can ensure that the ecological environment is not damaged. The amount of ecological environment damage is often uncertain. When the ecological environment damage behavior not only causes damage to the personal and property rights of specific subjects, but also causes damage to public interests, that is, in the case of damage to the ecological value of the ecological environment, the punitive compensation system should be applied to achieve the protection of the ecological environment.

The ultimate purpose of accountability for ecological environment damage is to prevent and repair such damage, which serves as a deterrent to potential harmful actors and prompts them to take all necessary measures in a timely manner to prevent the occurrence of ecological environment damage. Therefore, it should be clear that the harmful actor causing the damage is the first person responsible for repairing the ecological environment itself, and comprehensive use of damage compensation mechanisms, environmental protection administrative supervision mechanisms Judicial supervision mechanisms such as procuratorial organs, market mechanisms such as insurance and funds, and public participation mechanisms of the public and environmental protection public welfare organizations will do their best to repair the damaged ecological environment. It is also necessary to clarify the scope of application of this law in space and time, as well as the main types of activities to be adjusted. In addition, the chapter must also abstractly summarize the legal principles of the Act, and the prevention, compensation and restoration of damage to the ecological environment should follow the principles of prevention first, comprehensive prevention and control, responsibility for damage and public participation. The administrative management system and the competent authorities in China and the allocation of their powers should also be clarified. In order to promote and enhance the assistance and cooperation between the various administrative authorities in the field of environmental protection, a mechanism for sharing environmental information related to the prevention and treatment of ecological and environmental damage must be established. Operators should take immediate measures to prevent ecological and environmental damage from occurring and report the corresponding situation to the competent environmental protection authorities at their location in a timely manner.

At the same time, the duties of the administrative authorities at the stage of prevention of ecological and environmental damage are clarified, including, first, guiding the operator in fulfilling its legal obligations and establishing a system for the emergency management of ecological and environmental damage; second, the operator should provide timely information on the threat of ecological and environmental damage in order to assist the administrative authorities in taking preventive measures; thirdly, when necessary, organizing third-party measures to prevent ecological and environmental damage. If ecological damage has already occurred, the focus of the work will be shifted to preventing further expansion of ecological damage. It is clear that the perpetrator of ecological damage shall bear the first obligation to repair the damage, formulate measures to repair the ecological damage in accordance with the requirements of the competent environmental protection authorities, deliver the alternative plan to the competent environmental protection authorities in a timely manner and actively cooperate in the implementation of the repair measures.

Prior to the implementation of the Civil Code, the focus on environmental damage was on liability, but the standard of compensation was difficult to measure, the amount of compensation supported by the courts was limited, and it was not possible to address the phenomenon of environmental pollution and ecological damage. Article 1234 of the Civil Code stipulates that in the case of ecological damage,

if it can be repaired, it should be repaired. The so-called capable of repair means that the ecological environment can be restored to the corresponding state before the damage occurred. At the same time, China's judicial practice has also adopted the "who pollutes, who treats, who damages, who compensates" purpose of environmental legislation. Although the compensation for damage to the ecological environment can repair the environment, but due to the compensation standard is not uniform, the court has greater discretion, and part of the fine is often not used for ecological environment restoration, still can not effectively solve the problem of environmental protection. After the introduction of the Civil Code, the ecological environment restoration as the primary mode of responsibility, can effectively solve the above problems. If the responsible person fails to take measures to restore the ecological environment, the court can entrust a third-party professional organization to restore the ecological environment, and the corresponding costs incurred will be borne by the responsible person. Due to the strong technical nature of ecological environment restoration, repairing by qualified institutions can better protect the ecological environment compared to repairing by the responsible person themselves. However, it should be noted that the entrusted repair does not represent the transfer of repair responsibility, and the corresponding responsible person should bear the responsibility for repair.

It is worth noting that liability for damages cannot be used in conjunction with liability for restoration. Firstly, punitive damages aim to compensate for the losses suffered by the injured party, rather than profit making methods. If there is a possibility of profit for the injured party, it violates the original intention of the establishment of environmental protection law; Secondly, the main purpose of punitive damages is to repair the damaged ecological environment, which itself has the function of repairing the ecological environment. If the responsible person bears the punitive damages, the basis for their right to claim environmental restoration responsibility no longer exists. Otherwise, the responsible person will bear dual responsibility and have no legal basis. Finally, punitive damages is to realize the form of private litigation, and environmental restoration liability can only be realized through the public interest litigation, environmental management department can require the responsible person to assume responsibility through the administrative penalty.<sup>[9]</sup> At present, China's environmental protection law should be based on the repair responsibility.

## 5. Conclusions

After the promulgation of the Civil Code of China, the responsibility for ecological damage was added, which further improved China's ecological environment protection. However, after the promulgation of the Civil Code, the corresponding ecological environment protection law was not updated, and more details of legal implementation were not clarified. On this basis, the harmonization between the Civil Code and the law on environmental protection should be improved, and the relevant provisions on ecological environmental protection in the Civil Code should be used to provide a basis for the law on environmental protection, to provide a systematic basis for dealing with cases of environmental infringement, and to improve the regional legislation on ecological environmental protection.

## References

- [1] Lv Zhongmei, Dou Haiyang. Reconstruction of environmental infringement relief system by "ecological restoration theory"[J]. *China Social Science*, 2020(02):118-140+206-207.
- [2] Lv Zhongmei. The past and present life of the Environmental Protection Law[J]. *Politics and Law*, 2014(05):51-61.
- [3] Wang Xinwei. Realizing greater progress in promoting green development[J]. *Contemporary Guangxi*, 2022(21):34-35.
- [4] Gao, Lina. Report on Statistical Analysis of Local Legislation: June-July 2021[J]. *Research on Local Legislation*, 2021,6(05):110-130.
- [5] Yan R. Report on the Statistical Analysis of Local Legislation: 2022[J]. *Research on Local Legislation*, 2023,8(01):124-138.
- [6] Fang Xinjun. The Realization of Inherent System Externality and Civil Code System Coherence A Comment on the Provisions of Basic Principles of the General Principles of Civil Law[J]. *Chinese and foreign jurisprudence*, 2017,29(03):567-589.
- [7] LIU Chao. On the institutional development of the "green principle" in the civil code of tort liability[J]. *Legal Science (Journal of Northwest University of Political Science and Law)*, 2018,

36(06):141-154.

[8] ZHU XIAO. *On the Legislative Path of Comprehensive Prevention and Relief of Ecological Damage--Taking the Modification Bill of Tort Liability Provisions of French Civil Code as a Reference*[J]. *Comparative Law Research*, 2016(03):15-29.

[9] Wang Liming. *Highlights of Liability for Environmental Pollution and Ecological Damage in the Civil Code*[J]. *Guangdong Social Science*, 2021(01):216-225+256.