

The Application of Punitive Liability in the Field of Ecological Environmental Infringement

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Abstract: Article 1232 of the Civil Code of the People's Republic of China introduces punitive damages liability for the first time in the field of ecological environmental infringement, and punitive damages in the field of environmental infringement have been landed in judicial practice. The application of punitive damages is reasonable and legitimate, which is beneficial to compensate and motivate the victim, and punish and deter the infringer. However, the application of punitive damages in the field of environmental infringement has some practical doubts, including the disputes over the scope of application, the disputes over the applicable requirements, the unclear compensation standards, and the confusion of the boundaries of civil law and criminal law. In order to apply punitive damages more reasonably in judicial practice, it is necessary to coordinate the relationship between punitive damages and public law liability, clarify the applicable standards of punitive damages, and improve the applicable conditions of punitive damages.

Keywords: punitive damages; Environmental infringement; Civil code

1. The question raised

In May 2020, the National People's Congress formally adopted the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), in which Article 1232 introduced punitive compensation liability for the first time in the field of ecological environmental infringement, clearly stipulating that "if the infringer intentionally polluted the environment and damaged the ecology in violation of legal provisions, causing serious consequences," The infringed person has the right to seek appropriate punitive damages." This breaks through the long-held principle of single compensatory compensation in the field of environmental infringement, and is the embodiment of enhancing the intensity of punishment and making up for the deficiency of compensatory compensation. At present, the punitive damages system has been implemented in the judicial practice in the field of environmental infringement, but there are disputes in the scope of application, applicable requirements, compensation standards, etc., so whether it can achieve the expected legislative purpose and produce good social effects is full of challenges.

2. The rationality of the application of punitive compensation liability for ecological environmental infringement is proved

The application of punitive compensation liability for environmental tort has already landed in judicial practice, and punitive compensation liability has played an important role and unique value in relief of environmental tort damage. The necessity and rationality of the existence of punitive damages for environmental infringement can be further investigated by analyzing the functional positioning of punitive damages system.

2.1 Compensation and incentive function

The liability of punitive damages is formed in accordance with the development of The Times, and its significance is to make up for the regulatory loopholes of compensatory compensation in judicial practice. In the general environmental pollution infringement cases, the victims of environmental pollution are often in a weak position, and they need to bear greater pressure to protect their rights. Although some victims of environmental pollution are willing to Sue for environmental tort damages, they are still difficult to deal with the subsequent burden of proof related to the damage facts, and the high cost of rights protection also hinders the smooth progress of litigation. The application of punitive

compensation liability enables the victim to obtain the compensation amount beyond the actual damage according to law, which can motivate all the victims in society to take the initiative to fight against illegal torts on the basis of making up the actual loss.

2.2 Punishment and deterrence function

The primary value of punitive damages is to punish the polluter severely, and its scope of compensation is not limited to the actual damage suffered by the victim, who can receive more than the usual amount of compensatory damages. Punitive compensation is the retribution given to the infringer's more subjective and serious infringement^[9]. The second is the pursuit of preventive effect, deterring potential infringers, so as to avoid the occurrence of more environmental pollution incidents. Civil law compensatory damages do not have enough deterrent effect, so punitive damages should be used to make up for this loophole. Punitive damages, through the open form of punishment, reasonably increase the damage liability of polluters, and in fact reduce the possibility of polluters to gain high profits by means of bad acts of polluting the environment.

3. Challenges encountered in the practice of applying punitive compensation liability for ecological environmental infringement

Although punitive liability has unique value and practical utility, it plays an important role in making up for the actual loss of the victim, motivating the victim to defend their rights, punishing the infringer and deterring the potential infringer, but the practical doubts about the application of punitive liability in judicial practice are increasing day by day.

3.1. The application of punitive damages makes the boundary between criminal law and civil law unclear

Punitive damages is a special punishment system in which the mechanism of private law carries out the punishment and deterrent function of public law^[2]. Under the legal background of separation of punishment in our country, the application of punitive liability is considered to confuse the boundary between criminal law and civil law^[7]. In the field of private law, there must be a legitimate basis for the rights of one party and the obligations of the other. A single reasonable reason for imposing a penalty on the defendant cannot be the basis of justification for conferring an advantage on the plaintiff. When the plaintiff has not suffered actual damage, it cannot claim an improper benefit claim against the defendant. Therefore, if the purpose of the plaintiff is simply to punish the defendant, it is more appropriate to apply the criminal law mechanism. The conflation of punishment and compensation is also considered a violation of the basic principles of modern punishment law. The application of punitive compensation makes the boundary between criminal law and civil law unclear, which is suspected of destroying the unity of legal system.

3.2. The ambiguity of the compensation standard of punitive damages leads to the loss of control of the adjudication process

The "Civil Code" emphasizes the "corresponding" punitive damages, but the scope of compensation and the calculation standard of compensation are not clear, which is not conducive to the realization of the objective of punitive damages. In specific cases, judges lack a solid legal method to specify the corresponding amount of compensation, and the amount of compensation usually shows the characteristics of over-deterrence or insufficient deterrence.

3.2.1. There is no standard for calculating the amount of punitive damages

The calculation model of punitive damages can be divided into fixed amount model, flexible amount model and no limit amount mode^[1]. Article 1185, Article 1207 and Article 1232 of the Tort Liability of China's Civil Code respectively give the infringed the right to claim punitive compensation due to intellectual property rights, product defects and environmental infringement, but for the specific basis and calculation method of compensation, the use of "corresponding" which is a vague expression of "no amount limitation mode". The legislative department entrusts the judge with sufficient discretion, but in the future practice, it is feared that the purpose of punitive damages will be frustrated because of the judge's prudence or the legitimate rights and interests of the infringer will be infringed because of the arbitrary discretion.

3.2.2. The attribution of punitive damages is unclear

The essence of punitive damages is private law enforcement, and the ownership of punitive damages is determined as the victim's ownership, which can achieve the incentive purpose to the greatest extent. If the attribution of punitive damages is made public, it will be difficult to encourage the victims to actively defend their rights and combat the wrongful acts of infringers. Article 1232 of China's Civil Code does not specify the attribution of punitive damages in the field of environmental infringement, and the attribution of punitive damages is controversial. Some scholars advocate the attribution of punitive damages to public welfare purposes and believe that they should be handed over to the environmental protection department for special purposes^[6]. Article 1232 of China's Civil Code uses the subject of "infringed", which has a specific victim, and the punitive damages are clearly limited to the scope of private interest tort relief. Taking the punitive damages in the private interest tort lawsuit into consideration, there is a suspicion of confusing the private interest relief and the public interest relief.

3.3. The requirements for the application of punitive damages for environmental infringement

If the applicable conditions of punitive damages liability in the field of environmental infringement are not clear, it will hinder the punitive damages system to play the role of damage filling and deterrence to a large extent. The problem of application requirements is an important premise and basis of application, which needs to be clarified urgently.

3.3.1. It is difficult for the subjective requirement to be limited to "intentional" to cover various cases of environmental infringement

At present, Chinese law limits the subjective requirement of applying punitive liability in the field of environmental tort to "intentional" only. However, the subjective psychology can not cover all the environmental tort situations in reality, and the application of a single subjective element will also reduce the enthusiasm of the victim to propose punitive compensation. Some scholars argue that "gross negligence" should be incorporated into subjective conditions as an independent fault form. Both intent and gross negligence are subjective errors of willful conduct, and they are related to each other in the degree of moral criticism^[5]. If gross negligence is included in the subjective requirements of punitive damages, it can warn the actor to actively perform the duty of care and attention to avoid more infringement. The scholars who hold the negative view believe that gross negligence is a kind of universal behavior, and there is no need for separate punishment^[10]. There is no precedent of applying punitive damages for ecological environmental infringement under the gross negligence of the infringer in the judicial practice of our country. If punitive damages are applied for gross negligence in the field of environmental tort, the scope of punitive damages may be excessively expanded, thus violating the value goal of punitive damages.

3.3.2. The distribution of the burden of proof and the standard of proof for causality are not clear

Whether the burden of proof of causality of punitive damages for ecological environmental infringement needs to be reversed is not clearly stipulated in the law. If the victim proposes punitive damages, then should continue to use the "inverted burden of proof" rule, or apply the traditional "who claims, who provides evidence" principle, there is a dispute. In general, the reversal of burden of proof is applied in environmental tort cases. The purpose is to balance the disparity of economic strength and ability of proof between the infringer and the victim. In environmental civil public interest litigation, the plaintiff is generally the procuratorate or environmental protection organizations provided by law, and the defendant is generally the enterprise. There is no disparity between the two sides of the original defendant in all aspects, so it is not suitable to continue to use the reversal of burden of proof rule. For environmental civil public interest litigation, we should adopt a more reasonable and effective distribution mode of burden of proof. At the same time, what kind of proof standard should be met by the subject who bears the proof responsibility of causality is also an urgent problem to be solved. Civil burden of proof is mostly based on high probability, while criminal burden of proof is based on beyond reasonable doubt. Both the Civil Code and the Judicial Interpretation lack clear provisions on the standard of proof of causation. The relationship between the ecological environmental tort and the damage result is often very complicated, if there is no exact proof standard, it will not be conducive to objectively judge the existence of causality.

4. The system construction of punitive compensation liability for ecological environmental infringement

The liability of punitive damages is a double-edged sword, which has the possibility of being abused and overcorrected^[8]. In order to reasonably apply punitive damages liability in the field of environmental infringement and realize the effect of private law and deterrent purpose of punitive damages liability, it is necessary to put forward targeted optimization measures according to the application problems in judicial practice.

4.1. Coordinate the relationship between punitive liability and public law liability

All kinds of legal liability show some overlapping functional characteristics, such as administrative liability, criminal liability and punitive compensation liability all reflect the punishment and deterrence functions. The punitive compensation for environmental infringement goes beyond the usual scope of filling in the damage of private interests, and it needs to consider the provisions of public law in the identification standard of liability, and the coordination with other punitive responsibilities in the punishment target. The punitive liability and public law liability in the field of ecological environmental tort have a highly homogeneous function, so it is necessary to properly coordinate the application of the two kinds of liability, so as to maximize their respective roles and values. The application of punitive compensation liability for environmental tort is a special supplement to the insufficient deterrent effect of public law liability regulation, but also to prevent its abuse. The court should consider the overall deterrent effect of private law liability and public law liability when deciding the application of punitive liability. On the basis of judging whether the deterrent function has been realized in specific cases, the application and amount of punitive compensation liability for ecological environmental damage can be effectively controlled. In the specific application, if the implementation of administrative penalties or penalties can achieve the expected deterrent purpose, then it can be decided that punitive compensation liability is no longer applicable.

4.2. Establish the applicable standards for punitive damages

When applying punitive damages in the field of environmental infringement, it is particularly important to grasp the applicable standards and standards of punitive damages. Unreasonable punitive damages will lead to insufficient deterrence or excessive deterrence, it is difficult to play the effectiveness of punitive damages system. At present, China's law has not clearly stipulated the amount of punitive damages for environmental infringement and the attribution of compensation, which makes the ruling situation go out of control, and the attribution of punitive damages causes controversy.

4.2.1. Reasonably calculate the amount of punitive damages

The punitive damages system of our country originated from outside the region, and the specific calculation method of punitive damages has not been clarified at present. Considering that the "flexible amount model" based on a certain basic amount is generally adopted in legislation in recent years, this model can be referred to in the process of setting the standard for punitive damages for environmental infringement. First of all, the base of punitive damages for environmental infringement should be measured according to the actual losses suffered by the victims. In the case of serious personal health damage or death suffered by the victim as a result of environmental infringement, the actual loss mainly includes medical expenses, nursing expenses and other reasonable expenses for treatment and rehabilitation. Secondly, in the process of reasonably calculating the amount of punitive damages for ecological environmental damage, the following factors should be further considered: First, the scope of benefit of the infringer, that is, the increase of income and the necessary expenditure saved by the infringer through the implementation of illegal acts. Second, the degree of subjective malignancy, that is, according to the different subjective psychological states of the infringers who carry out the ecological environmental tort, the consequences and responsibilities they should bear will be different. Third, the certainty of the outcome of the damage. Infringers intentionally pollute the environment and destroy the ecology in violation of the law, which may cause different degrees of results, including ecological environment damage and personal and property damage of specific victims. Fourth, consider the offender's ability to perform the responsibility and rectify the situation as appropriate. If the enterprise is on the verge of bankruptcy, the amount of compensation may be appropriately reduced^[3].

4.2.2. Clarify the attribution of punitive damages

Article 1232 of China's Civil Code does not make a clear arrangement for the attribution of punitive

damages in the field of environmental infringement, but its legislative model is roughly similar to the provisions of punitive damages for product infringement liability and intellectual property infringement liability. According to the general payment rules of tort liability damages, all of them should belong to the infringer. In the specific environmental tort litigation, the infringer is the subject of punitive compensation according to law. The serious personal or property losses suffered by the infringer are all attributed to the infringer's illegal acts of polluting the environment and destroying the ecology, and the infringer's filing of punitive damages will inevitably consume certain material and financial resources, so it is legitimate and reasonable to ascribe punitive damages to the infringer. In recent years, there is a tendency to turn punitive damages into public benefits. It is believed that punitive damages involve public benefits and part of the damages should be used for public purposes. If we want to define the attribution of punitive damages as public interest, we must have clear legal provisions as theoretical support. The restoration responsibility and compensation responsibility stipulated in the Civil Code for ecological environmental damage have already realized the relief of public damage, so it is no longer necessary to use punitive damages for public relief.

4.3. Improve the requirements for the application of punitive damages

In judicial practice, the application of punitive damages must meet the specific constituent conditions, which is also an important prerequisite for the application of punitive damages. However, the issue of specific application requirements has aroused the attention and discussion in the academic circle, and the disputes mainly focus on the subjective requirements and causality requirements.

4.3.1. "Gross negligence" is included in the subjective requirements for the application of punitive damages for environmental infringement

Article 1232 of China's Civil Code limits the subjective requirement of applying punitive damages as "intentional". However, some scholars put forward that "intentional" as the only subjective element can not completely cover the complicated situation of environmental infringement in reality. The upper limit of facts reduces the scope of application of punitive compensation for environmental infringement, which is not conducive to the realization of the normative purpose of punishing and preventing environmental infringement. Gross negligence is a kind of subjective fault which can be avoided to a large extent, and has strong moral censure. "Gross negligence" and "intentional", as two highly similar fault forms, show very similar malignant degree. The infringer who holds these two kinds of psychology neglects the fulfillment of the duty of care and care, and ignores the legitimate rights and interests of others and acts recklessly, even at the cost of causing serious damage. Infringers in the field of environmental pollution usually foresee the high possibility that the infringing act driven by their vicious subjective psychology will lead to serious consequences, but still allow the harmful results to occur.

4.3.2. Clarify the distribution of the burden of proof and the standard of proof for causality

The causality of environmental infringement usually depends on professionals using equipment to make clear judgments. Infringers have sufficient material and financial resources, while mastering the types of pollutants, quantities, pollution consequences and other professional information, and they have more sufficient ability and conditions to prove evidence^[4]. In addition, the problem of environmental tort shows obvious cumulative, technical, progressive, if follow the traditional civil tort "who claims, who provides evidence" principle, I am afraid it is difficult for the victims to obtain compensation. Therefore, in environmental tort, if the victim requests compensatory compensation, the law stipulates that the burden of proof inversion rule is adopted for the causal relationship in the field of environmental tort, and the infringer bears the burden of proof that there is no causal relationship between the environmental tort and the consequences of serious damage. In fact, this greatly reduces the burden of proof of the victim, and at the same time, it punishes the infringer with the transfer of the burden of proof.

However, if the victim requests punitive damages, if the principle of no-fault liability continues to be implemented and the principle of inverted burden of proof is followed, there is a suspicion of further aggravating the liability of the infringer. Based on the consideration of equal risk and return, some scholars proposed that the burden of proof of causality in the case of punitive damages borne by the victim is more consistent with the principle of fairness. However, in punitive damages, there is still a disparity in strength between the infringer and the victim. In order to restrict the application of punitive damages, it is extremely difficult for vulnerable victims to adopt the principle of "who claims, who provides evidence", whether it is to prove subjective intent or the causal relationship between the tort and the consequences of damage. Therefore, in order to realize substantive justice, it is still necessary

to apply the principle of "reversing the burden of proof" in punitive damages, but to make it clear that the victim should not only provide preliminary proof, but should meet the intermediate standard of "clear and convincing evidence".

5. Conclusion

In the context of the construction of ecological civilization, the Civil Code has established the liability system for punitive damages for ecological and environmental infringement, which is an important institutional measure to promote the construction of ecological civilization. With the Civil Code stipulating that punitive compensation liability is applicable in the field of environmental tort, the focus of the study on punitive compensation for environmental tort has shifted from legislation to judicature. In judicial practice, the application of punitive damages has met many realistic questions. In order to reasonably regulate the application of punitive damages, it is necessary to reasonably solve the problem of liability conflagration between punitive damages and public law liability, reasonably calculate the amount of punitive damages and clarify the attribution of punitive damages, include gross negligence in the category of subjective elements of punitive damages, and clarify the distribution of the burden of proof and the standard of proof of causality.

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